DISCIPLINARY DECREES OF THE GENERAL COUNCILS

TEXT, TRANSLATION, AND COMMENTARY

BY

REV. H. J. SCHROEDER, O.P.

B. HERDER BOOK CO.

15 & 17 SOUTH BROADWAY, ST. LOUIS, MO.

AND

33 QUEEN SQUARE, LONDON, W. C.

1937

NIHIL OBSTAT

Fr. Norbertus Georges, O.P.,

Fr. Humbertus Kane, O.P.

IMPRIMI POTEST

Fr. Terentius Stephanus McDermott, O.P.,

Prior Provincialis

NIHIL OBSTAT

Sti. Ludovici, die 6. Aprilis, 1937,

F. J. Holweck,

Censor Librorum

IMPRIMATUR

Sti. Ludovici, die 7. Aprilis, 1937,

✠ *Joannes J. Glennon,*

Archiepiscopus

Vail-Ballou Press, Inc., Binghamton and New York

PREFACE

This book was not written for specialists. Such an undertaking, covering the first eighteen general councils, is beyond the mental and physical resources of a single lifetime, nor could it be compressed within the covers of a single volume. Indeed, a study of any one of the great outstanding councils, based on documentary sources and built up with the aid of printed and unprinted material, giving at the same time the historical background of its decrees, would require the better part of a single working career. Its purpose is to make readily available to the clergy, students, and educated laity, in one volume and in an English dress, the disciplinary decrees enacted by the Church in her general councils up to and exclusive of the Council of Trent. So far as the writer is aware, it is the first time that a work of this kind has been undertaken in any language. Outside the large collections of Labbe and Cossart, Hardouin, Mansi, and others, which are available mostly in university and large public libraries only, we have, of course, the nine volume *Conciliengeschichte* of Bishop Hefele, recently translated into French and augmented by the Benedictine H. Leclercq (18 volumes). Hefele's history is still the standard work on the councils. For the ordinary private library, however, and for the classes of readers concerned, it is too large a work. It covers not only the general councils but also national and provincial councils and diocesan synods up to the sixteenth century, and embraces history of dogma, canon law, liturgy, ecclesiastical history and discipline, and political history. It has furthermore the disadvantage of being in a foreign language. The present work, therefore, is intended to supply a want, a want indeed so long felt that no apology is needed in the attempt to meet it.

Needless to say, the task was by no means an easy one, for in some respects it meant the breaking of new ground. Decrees were not always easy to translate and to interpret. That I have everywhere succeeded in doing so correctly, is a claim which I am not conceited enough to make. The commentaries on the decrees required an extraordinary amount of reading and study. They give the why and wherefore of the decrees, the historical background, without which many would be unintelligible to readers of today. For, after all, the full scope and import of a conciliar decision, whether of a dogmatic or disciplinary nature, can be grasped only when studied in the light of the conditions and forces that produced it. Unfortunately, from an historical viewpoint some of the gen-

eral councils, important ones too, have been sadly neglected. Thus far the five councils of the Lateran and the two of Lyons have been treated in a stepmother fashion. Even the Fourth Council of the Lateran, presided over by the great Innocent III, one of the greatest and most influential ecclesiastical assemblies, has to date received only scant consideration from the historian. A conciliar decree may be brief, simple, and unassuming; yet, what a wealth of interesting historical material lies buried and forgotten in its background! To keep this book within a reasonable compass, I have added commentaries to those decrees only that required them for the purpose of elucidation.

The arrangement of the work is the same throughout. First is given a historical sketch of the council; this is followed by a digest of the decree, the decree itself, and the commentary where one is given. For purposes of convenience I have added the text of the decrees. The Greek text is that edited by Lauchert, *Die Kanones der wichtigsten altkirchlichen Concilien,* Freiburg i.Br., 1896. The Latin text of the Eighth General Council I have taken from Catalani, *Sacrosancta concilia oecumenica.* From the same work and from Hefele-Leclercq, *Histoire des conciles,* with reference to the Friedberg edition of the *Corpus Juris Canonici,* is taken the text of the following councils; while that of the Councils of Basle and the Fifth Lateran is taken from the *Conciliorum collectio* of Hardouin.

THE AUTHOR

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INTRODUCTION

I

Most of the councils held by the Church in the course of her history, whether ecumenical or provincial, found it a matter of necessity to issue series of disciplinary measures or rules, designed for the good government of Christian society and the sanctification of individuals. Till the twelfth century such enactments were called *canons*, a term which from an ecclesiastical standpoint has a very interesting history. Originally "canon," from the Greek κανών, signified a straight rod or line, or more correctly, a ruler—the instrument used by architects and artificers for making straight lines. Among the ancient Greeks the term was variously applied, largely with a secondary meaning, yet always with the notion of straightness, fixity, norm, criterion. Thus in Homer (*Iliad*, viii, 193, xiii, 407) κανόνες are two straight rods running diagonally across the hollow of a shield; and in another place (*ibid.*, xxiii, 761) the word is applied to a rod or bar used in weaving. A curtain rod was called κανών, and so was sometimes also the tongue or beam of a balance. From the literal sense the term naturally passed into metaphorical use to express what served to regulate, fix, determine, or what might be called the setting or fixing of a standard or model, and thus it had its counterpart in the Latin *regula* and *norma*. In this sense the general rules or principles of grammar and rhetoric were called κανόνες; so also were the chief epochs of history by means of which intermediate dates were determined. The grammarians of Alexandria characterized as κανών the collection of classic Greek authors, whose works had been acknowledged as standards, that is, types and models of excellence. Similarly, in the sphere of sculpture, certain works, regarded as the acme of human achievement, for example, the Δορυφόρος (spearman) of Polycletus, were called κανών, that is, rules or models of exquisite proportion and finish. In music, the monochord was known as the κανών or basis on which all intervals were constructed.

With the preaching of the Gospel by the Apostles and their immediate successors, the term was naturally adopted and consecrated to ecclesiastical usage, for there was no other word in the Greek language so well adapted to represent the element of definiteness, fixity, and exactness in Christianity. During the earliest period of the Church it designated simply the rule of faith in general, a formula of orthodox belief the acceptance

of which was binding on every Christian, a norm by which it could be known with certainty what men must believe in order to be saved, in contrast to the imperial laws, νόμοι, *leges*. Irenaeus called it Σωμάτιον τῆς ἀληθείας, *corpusculum veritatis*. It had its counterpart in the Latin *regula fidei*.[1] During this period apparently its application did not extend to any separate decisions of the Church, disciplinary or otherwise, for the plural form of the word is seldom used by the early Christian writers. In the New Testament it is used four times in the Epistles of St. Paul, who was the first to adopt it. He used it not only to express a definitely prescribed sphere of Apostolic labor,[2] but also a directive and regulative principle of life.[3] Following St. Paul, later Christian writers had frequent recourse to the metaphorical use of the term, both in a general sense[4] and particularly with reference to a fixed and definite rule of belief.[5] The early Fathers in their controversies with the heretics appeal continually to "the canon of faith" (ὁ κανὼν τῆς πίστεως), to "the canon of truth" (ὁ κανὼν τῆς ἀληθείας), to "the Apostolic canon" (ὁ κανὼν ἀποστολικός).[6] Irenaeus calls the baptismal creed "the canon of unwavering truth";[7] Polycrates in his letter to Pope Victor speaks of "the canon of faith";[8] Eusebius speaks of "the canon of truth,"[9] St. Basil of "the traditional canon of religion,"[10] while Socrates applies the term to the Nicene Creed.[11] These usages of the term have reference to a definite and fixed formula of Christian belief, a creed that embodied the fundamental articles of the Church's teaching, which to the Christians was an unerring guide, a *lux in tenebris*.[12]

The expression in fixed terms of the differentiation between dogmatic and disciplinary canons seems not to have existed during this early period either in the East or the West. The early Christians, impelled by the single desire of unflinching fidelity to the divine Master, united both elements in the single obligation to observe the general rule of faith, and hence there was little need to discriminate canons explicitly into dogmatic and disciplinary. Gradually, however, the necessity for such a distinction arose, but nowhere, either in the East or West, was there uniformity with regard

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[1] Tertullian, *De praescr.*, 13; *Adv. Prax.*, 2; *De virg. vel.*, 1.
[2] See II Cor. 10:13-16.
[3] Gal. 6:16.
[4] Clem. Rom., *Epist. ad Corinth.*, chaps. 1, 7.
[5] *Ibid.*, chap. 41.
[6] *Dict. d'archéol. chrét. et de liturgie*, II, 1911.
[7] Ὁ κανὼν τῆς ἀληθείας ἀκλινής. *Adv. Haer.*, I, ix, 4.
[8] Eusebius, *Hist. eccl.*, V, xxiv.
[9] *Hist. eccl.*, IV, xxiii.
[10] *Epist.* CCIV, 6.
[11] *Hist. eccl.*, II, xxvii.
[12] Clement of Alexandria calls the harmony and concord of the law and the prophets with the covenant given to men at the coming of the Lord, an "ecclesiastical canon." *Strom.*, VI, 15; VII, 17.

to the term used to designate a disciplinary enactment. Thus we find such an enactment called "the canon of the Church" (ὁ κανὼν τῆς ἐκκλησίας), which could apply equally as well, as it actually did, to a decision of dogmatic content. Another expression used was "ecclesiastical canon" (κανὼν ἐκκλησιαστικός). The First Council of Nicaea (325) in four of its canons (2, 6, 10, 16) refers to as many earlier "ecclesiastical canons." Eusebius denominates a disciplinary decision ὅρος (rule), ψῆφος (decree), and also ἐκκλησιαστικὸν δόγμα (ecclesiastical ordinance or decree), while Cyprian calls it *sententia, decretum*. As a matter of fact, the expressions θεσμός (law, ordinance, precept) and ὅρος were not infrequently applied indiscriminately to decisions of faith and discipline. However, as disciplinary ordinances began to multiply, especially by reason of synodal activity, it became necessary to express these two classes of decrees, especially those relating to discipline, in fixed terms. This was done partly by the First Council of Nicaea, when in ten of its own ordinances [13] it applied the word "canon" to as many earlier disciplinary rules, and thus gave to the term a still more definite and restricted meaning without dispossessing it of the original idea involved in it. In fact, the rule of faith or revealed truth embodied the obligation of practice no less than of belief, and synodal disciplinary decisions are after all nothing else than guides or rules of Christian conduct or action. The council did not apply the term "canon" to its own enactments. The first council to do that was Antioch (341); disciplinary decisions of earlier councils were called δόγματα or ὅροι and sometimes θεσμοί.

From the Nicene Council to that of the Second Lateran (1139) inclusive, "canon" signified almost universally a disciplinary decree, whether issued by a council or by the Roman pontiffs, though in the latter case such enactments were commonly called *decreta, constitutiones, epistolae decretales*, and occasionally *auctoritates*. Gratian says: *Ecclesiastica constitutio nomine canonis censetur*, and *Porro canonum alii sunt decreta pontificum, alii statuta conciliorum*.[14] During the same period, dogmatic decisions were called in the East διατυπώσεις (statutes) and at times also ὅροι, while in the West they were denominated *canones, dogmata*, and *decreta*. Beginning with the Third Lateran Council (1179), less attention was given to the careful distinction of terms, and this council together with the following ones, abandoning the time-honored custom, styled its disciplinary decisions *capitula*. With the Council of Trent the ancient usage of the term "canon" underwent a complete change. This council named its disciplinary decisions *decreta de reformatione;* its dogmatic definitions *decreta de fide* where they state positively the points of faith then dis-

[13] Canons 1, 2, 5, 6, 9, 10, 13, 15, 16, 18.

[14] Dist. III.

puted, and *canones* when it attached to such short definitions the ancient formula *anathema sit*. Thus Trent, for the first time in the history of the term, applied *decretum* indiscriminately to dogmatic and disciplinary enactments, and *canon* solely and exclusively to those that refer to dogma. The example set by Trent, restricting the application of "canon" to dogmatic declarations, was followed by the Council of the Vatican, and this usage of the term, while not a complete return, is a nearer approach to the meaning it bore before the Council of Nicaea, when it signified the rule of faith.

The term was used also to designate the official list or staff of clerics attached to a church.[15] As applied to the canon of the mass, the term means a fixed standard to which all must conform. Benedict XIV says: "Canon signifies rule, and the Church employs this name to mean that the canon of the mass is the firm rule according to which the sacrifice of the New Testament is to be celebrated." [16] The same idea of a rule or fixed standard explains also its application to the authoritative list of the writings composed under divine inspiration, the canon of the Holy Scriptures. The ordinances of St. Gregory of Neocaesarea (Thaumaturgus), of St. Basil and St. Peter of Alexandria, are also called canons, but it is very probable that this name was given them at a later date.[17]

II

The disciplinary canons of the general councils hold an exceptional place in ecclesiastical law and in the life and history of the Church. They are rules or ordinances formulated and issued by ecclesiastical authority and designed to guide and direct the outward actions of the faithful in the matters of conduct and ecclesiastical administration. Hence their purpose is essentially a regulative or directive one. They often reflect the religious, political, and social conditions of the times in which they originated. They may have grown old and many of them inoperative, yet to the historian and to the jurist they are always of paramount interest, for like ancient monuments they throw light on what would otherwise remain an obscure situation. They tell in clear and concise language the story of the Church's long struggle against intrigue and wickedness among her own members in places high and low; her war against simony, against clerical concubinage, pluralism, usury, and other species of corruption. Of the disciplinary decrees that emanated from the first and fourth general councils, few, if any,

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[15] Nicaea, canons 16, 17, 19; Antioch, canons 2, 6. Socrates speaks of "the virgins enrolled ἐν τῷ τῶν ἐκκλησιῶν κανόνι." *Hist. eccl.*, I, 17.

[16] *De SS. Missae Sacr.*, II, 12.

[17] For other ecclesiastical usages of the term during the Middle Ages, cf. Du Cange, *Glossar. med. et infimae Latinitatis*, s. v.

have after a period of sixteen centuries grown entirely obsolete; for most of them deal with matters of fundamental and catholic interest, and consequently have in them a germ of immortality. With some exceptions in which decrees had only a local or limited territorial application, this is equally true of the decrees of all the general councils, many of which were renewed wholly or in part by the Council of Trent, are still in force, and will continue so.

What authority or binding force attaches to conciliar canons or decrees of a disciplinary nature? A general or ecumenical council is a legally convoked assembly of members of the hierarchy and others who have a right to participate in such an assembly, under the presidency of the pope or his legates, for the purpose of considering by common deliberation matters of faith and discipline; the resultant decisions or decrees are invested with the authority of the entire assembly, and are after papal confirmation binding on all the faithful. In the first place, then, no decree issued by a general council imposes an obligation until it has been accepted and confirmed by the supreme authority of the Apostolic See. A general council does not represent the teaching Church till the pope, the visible head of the Church, has given his approval. Without such approval a council is an acephalous entity and its decisions have not the binding force of laws for the whole Church. Such confirmation constitutes the very life of conciliar decrees, whether of faith or discipline, and the authority which the pope exercises in this respect, being the highest, cannot be delegated. That is the principle; the application of the principle, however, has under the influence of circumstances not always been uniform.

Secondly, conciliar decrees have no binding force till they have been promulgated, for such decrees are laws, and no law is binding until it has been brought to the knowledge of those whom it intends to bind. Gratian says, *Leges constituuntur cum promulgantur.*[18] St. Thomas includes promulgation in his definition of a law.[19] The lawgiver must make known his will to the community before that will can take effect.

The authors of positive ecclesiastical law are essentially the episcopate with the pope at its head. They exercise their activity as legislators in its most solemn form in ecumenical councils, where the episcopate in union with its head defines Catholic doctrine and formulates laws that are binding on all the members of the Church, or on all the members of a particular class which has its own discipline. There is the clerical discipline, covering the conduct and duties of the clergy; religious discipline for those who live in monasteries or convents, which affects the orders as a whole or individually; there is the discipline governing the duties and privileges of

[18] C.3, D. IV.
[19] See Ia IIae, q.90, a.4.

bishops, parish priests, and ecclesiastical superiors, matrimonial discipline, etc. The authority or binding force of decrees issued by a general council is, therefore, coextensive with the authority of the council itself, universal, binding on all the members of the Church and on all members of a particular class.

In connection with this it may be asked, what is the duration of this binding force, since many of the decrees thus far issued by general councils no longer possess that obligation? In the matter of decisions referring to faith, there can of course be no question, for these springing from the Church's *magisterium* are invested with the double character of immutability and infallibility, are irreformable and irreversible, and are therefore binding on all the faithful at all times. In the sphere of moral discipline we may distinguish two classes of disciplinary laws relating both to government and to the regulation of morals. To the first class belong those by or through which the Church points out to the faithful and confirms the natural or divine law, and also those disciplinary measures that are intimately connected with the natural or divine law. Over laws of this class, strictly speaking, the Church has not much more control than she has over dogmatic enactments, for the natural law antedates and is superior to the ecclesiastical law. They represent immutable rules based on eternal verities. They are not subject to the alterations effected by time and custom. They transcend time and space and are independent of the changing circumstances of peoples and nations. They admit of no dispensation, and no prescription obtains against them. Hence the obligation of their observance is also binding on all at all times.[20]

To the second class of disciplinary laws belong those that are made by the free legislative action of the Church, that is, although they are not in a way absolutely independent of natural or divine law, for in the ultimate analysis they are founded on it, they are, nevertheless, outside of it, and consequently possess no immunity from the vicissitudes that form part and parcel of all things temporal. This is ecclesiastical discipline in the restricted and more common acceptation of the term. Thus, while faith remains always the same everywhere and in all ages, discipline varies with time and place. It is born according to circumstances of time and place. It grows old with the years and in its old age languishes and falls subject to decay. According as circumstances require, it is rejuvenated either in the same or another form.[21] If we seek exemplifications of the mutability of ecclesiastical discipline, we need not wander far from our path to find them. Whereas the essentials of penance and indulgences are the same today as in the primitive Church, the discipline connected with them has

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[20] Thomassin, *Vetus et nova ecclesiae disciplina* (Paris, 1688), preface, n. 17.

[21] *Ibid.*, n. 15.

undergone a profound change; in the matter of fasts, whether Lenten or otherwise, the Church shapes the requirements of this obligation to meet the conveniences and best interests of her subjects; since the twelfth century the Latin Church does not give communion to the laity under both kinds; the discipline prevalent in the early Church of not kneeling during divine service on Sundays and during the entire paschal season, no longer exists; then there are the matrimonial laws, subject to change as conditions may require. Disciplinary laws of this class may be called secondary in comparison to the two classes mentioned above, in which the Church is the exponent of natural or divine law. In practice, however, this classification or distinction must not be taken too seriously; for while it is justified as an illustration, it must be remembered that the Church in her disciplinary laws does not always declare whether or to what extent she speaks in the name of natural or divine law.

In the matter of conciliar canons and decrees, then, or for that matter any ecclesiastical decrees, that refer to discipline in this restricted sense, we should bear in mind that their content or subject matter is dependent not only on circumstances of persons, places, and times, but also on considerations of expediency or temporal necessity. In this respect the Church must be, in a sense, like St. Paul, all things to all men, adapting herself to the ever changing conditions of life and to the various and variable customs of peoples and races. The binding force of conciliar canons of this nature is governed by the forces that created and produced them, and any change on the part of these forces will naturally bring about a corresponding change in the binding force of the decrees. General councils therefore legislate for the whole Church and for all the members of a particular class within the Church, and the legislation is binding till the Church, in consequence of altered conditions, sees fit to change or modify such laws or, in the case of laws that have no connection with natural or divine law, till the Church completely abrogates them.

Finally, since the scope or purpose of changing disciplinary decrees is essentially a regulative one, we cannot speak of a connection between them and positive infallibility. That a negative infallibility attaches to them, that is, that the Church, in making and imposing general disciplinary laws on all the faithful, can neither prescribe anything that is in opposition to the natural or the divine law nor forbid anything that the natural or divine law prescribes, is a thesis that cannot be questioned. As a matter of fact, Catholics believe that in all disciplinary matters where practical spiritual discernment is required, the Church receives the necessary divine guidance.

THE FIRST GENERAL COUNCIL (325)

FIRST COUNCIL OF NICAEA

History. The First Ecumenical Council of the Church was held in 325 in Nicaea (now Isnik), a city of Bithynia in Asia Minor. In the history of Christianity it was an event of paramount importance; not merely because it was a new expedient adopted to meet and decide ecclesiastical issues of an extraordinary nature, but because of its far-reaching and uncompromising decision in a matter that threatened the very existence of Christianity. The immediate occasion of its convocation was Arianism, which for a number of years had been creating a profound disturbance in the Church by its warfare against the divinity of Christ. Arius, a Libyan by descent, received his theological training in the school of Antioch, at the head of which was Lucian the Martyr, whose Christological system, a compromise between adoptionism and subordinationism, he later transplanted to Egypt. The teaching of Arius was but the logical outcome of the principles of the school, and it is doubtful whether in the early stages of the controversy the Lucianists, or the majority of them and their supporters, were prepared to follow him all the way to such extremes. At any rate, his principles were their principles, and when he was attacked they came to his aid on the ground, no doubt, that the doctrinal foundation of the school was at stake. He was a fellow-student of the two Eusebiuses, one, afterwards bishop of Nicomedia, the other, the future historian and bishop of Caesarea in Palestine, both of whom played such a large part in the controversy.

In 306, as a layman, Arius became involved in the Meletian Schism against Peter the bishop of Alexandria. On his reconciliation, Peter ordained him deacon. Further entanglements with schismatics led to his excommunication. After another reconciliation he was ordained priest about 313 by Achillas, Peter's successor, and was given direction of a church in Baucalis, near Alexandria. It was about 319 that he began to preach openly the heresy that would shake the Church to its foundations and would be the parent of many more heresies during the following three hundred years.

The teaching of Arius may be thus summarized: (1) there is but one God; He alone is unbegotten, eternal. (2) This absolute and transcendent God cannot communicate His being, His substance, for such communica-

tion would imply composition, divisibility. Hence in no true sense can God have a Son coequal with Himself and of the same substance with Him. (3) Consequently the λόγος, the Word, is a creature; a creature *par excellence*, the first and most perfect, but a creature created *ex nihilo* before time and before all ages to be God's instrument in the creation of the world. He is not God, neither is He a part of the world, but He is the intermediary between God and the world. He was capable of sinning, but He remained sinless and served God faithfully, and thus merited to be adopted by God as His only Son, in consequence of which adoption He is entitled to the veneration and worship of men.[1]

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[1] Arianism may be described as an effort of Eastern philosophic thought to rationalize or strip of mystery the relation of the λόγος to God, or of the Son to the Father. At bottom it was the old Christological problem: if there be but one true God, how can a true divinity be predicated of Jesus Christ? How confess one only God, if the λόγος, the Word, is also God? Or in other words, since the Father is true God, and since Jesus Christ is true God, and since there is only one true God, what is the precise relation of Jesus Christ to the Father? The answer of Scripture and tradition was satisfactory enough from the viewpoint of faith, but to those whose philosophical bent of mind urged them to seek the *ultimae rerum rationes*, it was not so readily acceptable. The current philosophy was essentially pagan, and Hellenic speculations constituted a dangerous temptation for Christian writers. The explanation of simple Christian truths by philosophical ideas tended to obscure rather than clarify them. Hellenic philosophy adopted the Logos theory to explain what otherwise was inexplicable to the pagan mind. But when that theory, undivested of its Hellenic conceptions, was introduced into Christian theology to elucidate the relation of the Son to the Father and to bridge over the chasm between God and the world, the results were bound to be disastrous. From that process arose those subordinationist traces or tendencies that we find in some of the Apologists and certain other orthodox ante-Nicene writers. From it sprang also the subordinationist theology of Antioch; and Arianism was born in Antioch, not in Alexandria. Whatever had been the successive and diverse concepts given to the term "Logos" in its meandering career from Heraclitus to Philo and the Neo-Platonists, beneath them all is recognizable the fundamental doctrine, that the Logos is an intermediary between God and the world; through it God created and governs the world, and through it also men know God and pray to Him. That was the Logos of Arianism and of other heretical isms that contended for the mastery during the third and fourth centuries of the Christian era.

How does this compare with the Logos of Scripture and tradition? St. Paul does not use the term, though his Epistle to the Hebrews may properly be called a complete treatise on the theology of the Logos. The term is used only by St. John, who consecrated it to Christian usage by emptying it of its Hellenic contents and filling it with a new meaning, namely, that this creative Word, which from all eternity was in God and was God, was made flesh and dwelt among men. To St. John the Logos is a living, pulsating, and concrete personality, Jesus, the Son of God; not the abstract, impersonal power of pagan philosophy. The Logos of Philo is an intermediary between God and the world, between the divine nature and human nature. The Logos of St. John is a Mediator, who unites in His Person the two natures, the divine and the human.

In the light of our present systems of philosophy and theology, it is possible for us to realize in a great measure the handicaps that confronted Christian writers during the early centuries of the Church. There was then no rational synthesis of the faith, no system of Christian theology as we have it today and have had it for centuries. There was no firm and precise theological language. To cut and fit, as it were, Chris-

In 320 or 321 Alexander bishop of Alexandria convoked in that city a synod in which Arius and the abetters of his heresy were anathematized by nearly one hundred Egyptian and Libyan bishops. This was a spark that was to develop into a mighty conflagration; the signal for a conflict, gigantic in proportions, between the orthodoxy of Alexandria and the heterodoxy of Antioch. The action of the synod only spurred the heresiarch on to greater efforts to secure converts to his views. He was not without adherents even outside Alexandria. The bishops who, like him, had passed through the school of Lucian entertained Christological views that were, if less radically promulgated, substantially the same as his, and they were not inclined to stand by and see their fellow-Lucianist ostracized without putting up a struggle in his defense. After his exile from Egypt, he made his way first to Caesarea in Palestine, where he secured the sympathy of three Syrian bishops, Eusebius of Caesarea, Theodotus of Laodicea, and Paulinus of Tyre. From Caesarea he proceeded to Nicomedia, where he was received with open arms by his lifelong friend Eusebius, the usurper and unprincipled bishop of that city, who energetically championed his cause and whom St. Basil called the "coryphеus of the Arian ring."[2] He was a man of considerable learning, influential at court, and did not scruple to resort to the most brazen intrigues whenever occasion required or seemed to require. Here, with his aid, Arius carried on by correspondence his campaign to broadcast his teaching and to increase the number of his followers, especially among bishops who were more or less inclined to subordinationist views. The number of these was not small. Many of the Eastern bishops, by misinterpreting Origen and attributing to him the doctrine of the subordination of the divine Persons, were Origenists, and their sympathies were naturally with Arius. Alexander had hoped to consign

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tian truth into the vocabulary of Plato, Aristotle, Philo, and others was a hazardous undertaking, while the reverse process, which finally prevailed, was a task that could not be accomplished in a day. For a due and proper enunciation of Christian dogma, language had in many respects to be refashioned. This is illustrated by the Catholic doctrines of the Trinity and the incarnation. Since from their nature they are above and beyond the reach of our intelligence, and were unknown till the preaching of Christianity began, they required on their first presentation new words, or old words used in new senses. It is not surprising, then, that in the theology of the Trinity and in the Christology of orthodox writers of the ante-Nicene period there is much that is unsatisfactory. Accurate theological terminology respecting these subjects was the fruit of the controversies that arose in the fourth century. These forced upon Catholics the necessity of expressing Christian doctrine in terms at once definite and inflexible, that became, as Cardinal Newman has said, "the protection and record of orthodoxy."

For the ante-Nicene doctrine concerning the Logos, cf. Tixeront, *History of Dogmas* (1930), Vol. I; Otten, *Manual of the History of Dogmas* (1917), Vol. I; Hefele-Leclercq, *Histoire des Conciles* (1907), I, 335-49, where an excellent bibliography is given.

[2] *Epist.* CCXLIV, 9.

the matter to silence, but the action of the heretics obliged him to address to the bishops of Asia a circular letter to forestall these efforts by informing them of Arius' excommunication and the character of his errors.[3] The confusion now grew rapidly and with every stride bitterness grew also, for intimately bound up with the quarrel that affected the entire Eastern Church were political or party considerations.

After his defeat of Licinius (323), Constantine the Great, now sole ruler of the Empire, set about to restore ecclesiastical and civil peace in the East as he had already undertaken by his convocation of the Synod of Arles (314) to suppress the trouble-making Donatists in the West. Having failed in his attempt to effect a reconciliation between Alexander and Arius, he decided, in all probability on the advice of Hosius bishop of Cordova in Spain, his confidant and counsellor in matters ecclesiastical, and on the advice also of some other bishops,[4] to convoke a council that should be rep-

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[3] Socrates, *Hist. eccl.*, I, 6.

[4] The first eight general councils, that is, all those held in the Orient, were convoked by the emperors. Whether this was done in each case with the approval of the pope, is a matter that is much debated. In the case of the present council there is nothing to indicate that the Pope was consulted in the matter. The council itself in its synodal letter to the African Churches, declared that it owes its convocation to the Emperor and to the grace of God (Socrates, I, 9). In his letter to the Church of Alexandria, Constantine stated expressly that he assembled the bishops in council by divine admonition, ὑπομνήσει θεοῦ (Socrates, I, 9). Nowhere is mention made of the Pope. The same is true of other documents. In the Emperor's address to the bishops at the opening of the council (Eusebius, *Vita Constantini*, III, 12), and in his letter to the Churches (*id.*, *Vita Const.*, III, 17; Socrates, I, 9), where above all one would expect to find a reference to the bishop of Rome had he had a part in the convocation, as also in his letter to the Nicomedians (Theodoret, *Hist. eccl.*, I, 20), we look in vain for a reference to such participation. Eusebius (*Vita Const.*, III, 6), Socrates (I, 8), Sozomen (*Hist. eccl.*, I, 17), Theodoret (I, 7), and Gelasius of Cyzicus (Hardouin, *Conciliorum coll.*, I, 346) speak only of the action of the Emperor. Rufinus (*Hist. eccl.*, I, 1) tells us that the Emperor was moved thereto *ex sacerdotum sententia*. Who these *sacerdotes* were, he does not tell us. That the bishop of Rome was one of them is improbable, for at the time the council was convoked the Emperor was in the Orient. Rufinus speaks not of consent or approval, but of counsel, advice (*sententia*). He speaks, moreover, not of one, but of several bishops or priests who had advised the Emperor. The *sacerdotes* were in all probability bishops who at the time were sojourning at the imperial court, or they were neighboring bishops. That Hosius was one of them, there seems to be scarcely any doubt. The Emperor had sent him in 324 to Egypt to adjust the differences between Alexander bishop of Alexandria and Arius. On reporting the failure of his mission, it was but natural that he, considering his experience, for he had presided over provincial councils both in the East and in the West, should advise the Emperor to have recourse to a general council to settle the controversy. Then, too, it must be remembered that nearly all of the emperors looked upon the convocation of a council as a matter that belonged entirely to their sphere of jurisdiction, even if they did seek the advice of some bishops. In external ecclesiastical affairs they considered themselves bishops; internal affairs of the Church belonged to bishops duly consecrated. Indeed Constantine the Great stated expressly that in external affairs of the Church he was a bishop *a Deo constitutus* (Eusebius, *Vita Const.*, IV, 24). Being a bishop himself, he did not consider it necessary to consult the bishop of Rome. That he sent him also an invitation, goes without saying; and

resentative of the entire Church, East and West, to settle the quarrel between the Bishop of Alexandria and his unruly presbyter.[5] In very respectful letters the Emperor implored the bishops of every country within the Empire to come to Nicaea without delay. To facilitate their journey and hasten the assembling of the council, he placed at their disposal the public conveyances and posts of the Empire. Whether he sent invitations also to bishops outside the Empire is not known with any degree of certainty; we do know, however, that some few such bishops were present. The number of bishops who attended is variously given. St. Athanasius speaks in different places of about 300,[6] but in his *Epistola ad Afros* he sets the number definitely at 318.[7] This is the number given also by Theodoret,[8] Gelasius[9] and the Council of Chalcedon (451).[10] With it the other early historians practically agree, and it is the number now almost universally accepted.[11] By far the majority of these were Greeks. The West, so far as our knowledge goes, was represented by Hosius of Cordova,[12] Cecilius of Carthage, Marcus of Calabria, Nicasius of Dijon,[13] Domnus of Stridon (in Pannonia), and the Roman priests Vitus and Vincentius, who represented Pope Sylvester. Outstanding figures were the bishops of the aposto-

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the Pope gave his approval by sending his legates. The position these held at the council indicates clearly that they were recognized by the bishops as the representatives of the supreme head of the Church. It is true, the Sixth General Council (Third of Constantinople, 680) in its eighteenth session (Mansi, XI, 661; Hardouin, III, 1417) declared that the Nicene Council was convoked conjointly by Constantine and Pope Sylvester. But this testimony comes too late to be trustworthy; and if that declaration, made, as it was, in open session, did not provoke dissent or the slightest suggestion of controversy, it was because the bishops were ignorant of the facts and simply took for granted that the speaker knew what he was talking about. That same council also declared that the Second General Council (381) was summoned by St. Gregory of Nazianzus and Nectarius (a layman at the time), while as a matter of fact it was convoked by Theodosius the Great.

[5] It is well to bear in mind that the chief purpose of the council was to settle the quarrel between Alexander and Arius, that is, to investigate and determine whether Arius had been justly condemned and deposed by his bishop, and not to pass judgment on the traditional doctrine concerning the relation of the Son to the Father. That question was not open to debate.

[6] *Hist. Arian. ad monach.*, c.66; *Apol. contra Arianos*, c.23 and 25; *De synodis Arimini*, c.43.

[7] C.2.

[8] See I, 7.

[9] Mansi, II, 818.

[10] *Id.*, VI, 955; Hardouin, II, 286.

[11] While this is the traditional and commonly accepted number, it must, of course, be understood as only approximate.

[12] Gams, *Kirchengesch. v. Spanien* (Regensburg, 1864), Vol. II, Part I, pp. 137–309; Leclercq, *L'Espagne chrétienne* (Paris, 1905), 90–121; Bardenhewer, *Gesch. d. altkirchl. Literatur*, III, 393–95.

[13] Morin, "D'où etait l'évêque Nicasius l'unique représentant des Gaules au concile de Nicée?" in *Revue Bénédictine* (1899), 72 ff.

lic sees, Alexander of Alexandria,[14] Eustathius of Antioch,[15] and Macarius of Jerusalem; then Marcellus of Ancyra,[16] whose zeal in combating Arianism led him to the opposite extreme of modified Sabellianism; Aristakes,[17] who came from Cappadocia as proxy for his father, the famous Gregory the Illuminator apostle of Armenia, and the two Eusebiuses, bishops of Nicomedia and Caesarea, both suspects. Celebrated for their virtues and power of miracles were Leontius of Caesarea in Cappadocia,[18] James of Nisibis,[19] Hypatius of Gangra, Nicholas of Myra in Lycia, and Spiridion of Cyprus. Then there were the confessors who had suffered during the last persecution; Paul of Neocaesarea, whose hands had been paralyzed by the application of red hot irons; Paphnutius of Upper Thebaid, who had suffered the loss of one eye and the mutilation of the left knee; Potamon of Heraclea in Egypt, who had one eye torn out; Amphion of Epiphania in Cilicia, Eustathius of Antioch, Hosius himself, and others. Mention must be made also of the great and invincible Athanasius, one of the most imposing figures in all ecclesiastical history, ὁ στῦλος τῆς ἐκκλησίας, "the pillar of the Church," as St. Gregory of Nazianzus called him, who, then only a deacon, accompanied his bishop, Alexander of Alexandria, as secretary to the council. Theodoret calls him the most uncompromising opponent of the Arians. It was a very august assembly, interesting in its composition and cosmopolitanism. St. John Chrysostom called it a council of confessors.[20] It was no doubt this outstanding quality of so many of its members that made it supremely great and influential in the consciousness of the Church. In contrast to the few who were distinguished for theological erudition, many were noted for their lack of education, which debarred

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14 Bardenhewer, III, 34-44.

15 Bardenhewer, III, 230-37; Cavallera, *Le schisme d'Antioch*, Paris, 1905; Sellers, *Eustathius of Antioch and His Place in the Early History of Christian Doctrine*, Cambridge, 1928; *Dict. de théol. cath.*

16 Bardenhewer, III, 117-24; *Dict. de théol. cath.*

17 *Dict. d'histoire et de géographie eccl.*, IV, 182-84. The following hymn of the Armenian Church is said to have been used when Gregory welcomed the return of his son from the council. It is taken from Burn, *The Council of Nicaea* (London, 1925), p. 143:

> We glorify Him who was before all ages,
> adoring the Holy Trinity,
> and the one Godhead
> Of the Father, the Son, and the Holy Ghost,
> now and ever through ages and ages. Amen.

18 On his way to the council, Leontius baptized the father of St. Gregory of Nazianzus. Greg. Nazian., *Oratio* XVIII, c. 12.

19 Peteers, "Le légende de saint Jacques de Nisibe," in *Analecta Bollandiana*, XXXVIII (1920), 285-373; *Dict. de théol. cath.*, VIII, 292-95.

20 *Oratio contra Judaeos*, III, 3.

them not only from participation in but also from following subtle discussions. But they were loyal to the faith transmitted to them by their fathers, in the light of which they had learned that Christ is the Son of God, true God; if He is not, then it is sheer idolatry to worship Him.

There is no hesitancy on the part of historians to accept the year 325 as that of the council. Uncertain are the month and day of its opening. To reconcile the dates of early writers, we may assume with a fair degree of accuracy that owing to the absence of the Emperor it was opened informally about the middle of May and solemnly by the Emperor as honorary president on June 20. The interval was taken up with discussions and disputations. Arius was invited to take part in them and was given full liberty to explain his teaching. Many of his adherents, among them about eighteen bishops, spoke in his favor. Constantine was present at all the sessions but took no part in the discussions. The actual president was Hosius of Cordova, assisted by the papal legates Vitus and Vincentius.[21] Details concerning the method and progress of the discussions are entirely wanting. Whether official records were made of the acts is uncertain. It is probable, however, that such records were made by some episcopal secretaries for the use of their bishops.[22] The early ecclesiastical historians are completely silent on the matter. From Rufinus we learn only that sessions were held daily, that Arius was often summoned before the council, and that the majority rejected his teaching.[23]

To check further divisions among the bishops resulting from the teaching of Arius and to prevent their repetition, it was not enough merely to condemn and exile the heretic. A general council must formulate the faith

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[21] Hosius and the two papal legates are generally considered to have presided over the council, the latter under the leadership of the former. That several presided is indicated by Eusebius when he says that after the Emperor, who opened the council with a discourse, had concluded, he handed the word over to the presidents (προέδροις) of the council (*Vita Const.*, III, 13). The opponents of Hosius declared him to be the man upon whom the chief work of the council devolved, οὗτος καὶ τὴν ἐν Νικαίᾳ πίστιν ἐξέθετο, "at Nicaea he gave an exposition of the faith" (Athan., *Hist. Arian. ad monach.*, c.42). Athanasius himself says of him: ποίας γὰρ οὐ καθηγήσατο συνόδου; "Over what council did he not preside?" (*Apol. de fuga sua*, c.5). Theodoret asks the same question in the same words: ποίας γὰρ οὐ ἡγήσατο συνόδου; (II, 15). Socrates in his list of the most important members of the council gives the following order: Hosius bishop of Cordova, Vitus and Vincentius, Roman priests, Alexander bishop of the Egyptians, Eustathius bishop of Antioch, Macarius bishop of Jerusalem (I, 13). Here Hosius holds the first place, followed by the two papal legates. In what capacity he presided, whether in the name of the Pope or as an appointee of the Emperor, is uncertain. Yet it seems hardly probable that the Pope would send to the council as his representatives only two priests, when he had at hand a man like Hosius, who was a theologian and by experience well fitted to preside over the assembly.

[22] Wikenhauser, *Zur Frage nach d. Existenz v. nizänischen Synodalprotokollen*, in Dölger, *Konstantin d. Grosse u. seine Zeit* (Freiburg i. Br., 1913), 122–42; Löschcke, *Das Syntagma d. Gelasius Cyzicenus*, Bonn, 1906.

[23] See I, 2.

with such exactness and precision that no heretic can subscribe to it. There was needed a definite and inflexible formula that would express for all time the consubstantiality of the Son with the Father, a creed or symbol that would express the traditional belief in the consubstantial in terms that would leave no room for error or misunderstanding. The only doctrinal synthesis which the Church recognized at the time was the "Creed of the Apostles," which originated in Rome but which from the time of its origin at an early date had undergone various modifications in different localities, and which, moreover, even in its original form did not enunciate in explicit terms the unity and absolute identity of the substance of the Father and the Son.[24] In the course of the discussions it became evident to the supporters of Arius that their doctrine, so opposed to tradition, would find no favor with the majority of the members of the council. To save Arianism, a third party, consisting of about twelve members of the original Arian faction, was formed and headed by Eusebius of Nicomedia, which Athanasius christened "the Eusebians." It submitted to the council an ambiguous symbol or profession of faith, the contents of which we do not know, but it aroused such a storm of indignation that it was torn to pieces.[25] That the term ὁμοούσιος (of the same substance, that is, consubstantial) and the possibility of its adoption as a test of orthodoxy had been considered by the leaders of the orthodox party, there can be scarcely any doubt. It is equally certain that many, perhaps the majority of the members of the council, did not regard the term without suspicion. Its past associations had not been of the best. It was a quasi-philosophic and non-biblical term. It had been employed by the Gnostics to explain their emanations; by the Sabellians to uphold the identity of the Father and Son, and had been rejected sixty years earlier by the Fathers in a synod of Antioch as savoring too much of materialistic conceptions of the Godhead.[26] At any rate, an attempt to ward off its adoption was made by Eusebius of Caesarea, a strong Arian sympathizer, when he submitted to the council what was probably the baptismal creed of his church, in the hope that it might be accepted as a sound and adequate expression of the Church's teaching on the point at issue.[27] From the viewpoint of Scripture and tradition this creed was unassailable. It was orthodox so far as it went, but it did not go far enough. Had the existing questions never been agitated, it would have

[24] Cf. art. "Apostles' Creed" in *Catholic Encyclopedia.*

[25] Theodoret, I, 7.

[26] From an ecclesiastical viewpoint the term had no authoritative tradition. The Synod of Antioch (264 or 272) rejected it as inconsistent with orthodoxy; yet the council imposed it on all the faithful to the end of time as the best safeguard, as in fact it is, of orthodox teaching. It is doubtful whether St. Athanasius was in favor of its orthodox revival, but once adopted he became its foremost champion.

[27] The Creed, together with Eusebius' own account of the proceedings at the council, is given by Socrates (I, 8) and Theodoret (I, 12).

answered satisfactorily the purposes of a test. It predicated of the Son every term of honor and dignity except the sameness and oneness of substance. To supply this deficiency, Constantine proposed, most likely at the suggestion of Hosius, who must have had an understanding with the leaders of the orthodox party beforehand, that this creed be accepted with the insertion of the discriminating term of orthodoxy, ὁμοούσιος, as a safeguard against all possible vagueness and subtle ambiguities of language. The orthodox party accepted the term as expressive of the traditional sense in which the Church had always understood Christ to be the Son of God. It became the banner and touchstone of orthodoxy.

However, the insertion of merely this term did not seem to exclude all subterfuge, for the Arians would perhaps have been able to accept it and then interpret it in a sense foreign to the mind of the council. Hence, there was inserted also the phrase, ἐκ τῆς οὐσίας τοῦ πατρός (of the substance of the Father), which Athanasius seems to have preferred to the term ὁμοούσιος. To the creed the council added an anathema against all who should presume to maintain or teach the contrary. The doctrinal synthesis thus formulated is known as the Nicene Creed or Symbol, and is as follows:

> We believe in one God, the Father Almighty, Maker of all things visible and invisible, and in one Lord Jesus Christ, the Son of God, the only-begotten of the Father, that is, of the substance of the Father (ἐκ τῆς οὐσίας τοῦ πατρός), God of God, light of light, true God of true God, begotten not made (γεννηθέντα, οὐ ποιηθέντα), of the same substance with the Father (ὁμοούσιον τῷ πατρί), through whom all things were made both in heaven and on earth; who for us men and for our salvation descended, became incarnate, and was made man, suffered and rose again the third day, ascended into heaven and will come to judge the living and the dead. And in the Holy Ghost.
>
> Those who say: there was a time when He was not, and He was not before He was begotten, and that He was made out of nothing; or who say that He is of another hypostasis or another substance (than the Father), or that the Son of God is created or is susceptible of change or alteration, (them) the Catholic and Apostolic Church anathematizes.[28]

These phrases and the condemnatory clauses at the end completely and effectively shut out Arian teaching. That there would be opposition, was to be expected. It concerned itself mostly with the ὁμοούσιος and was based on the extrinsic reasons indicated above. All the bishops except five subscribed their names, some of these through pressure of the occasion. Among these five was Eusebius of Nicomedia. In the end, however, and as a result of the determined attitude assumed by the Emperor, who let it

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[28] For the Greek text of the Creed, cf. Hefele-Leclercq, I, 443 f.; Tixeront, *History of Dogmas*, II, 34; *Dict. de théol. cath.* The text given in Denzinger, *Enchiridion* (1932), no. 54, is not correct. Whether the council made the creed of Eusebius the basis of its own, is uncertain. A comparison seems to favor such a hypothesis. Cf. Hefele-Leclercq, I, 436 ff.; Tixeront, *op. cit.*, II, 35 f.

be known that the decision of the council must be accepted, all signed except two, Theonas of Marmarica and Secundus of Ptolemais. They were condemned and together with Arius, who had met that fate in an earlier session, were banished to Illyria.[29]

The council dealt also with the controversy regarding the time of celebrating Easter [30] and with the Meletian Schism, the leader of which was Meletius, the bishop of Lycopolis in Egypt. Its decree in reference to this schism has been preserved in its synodal letter addressed to the Egyptian bishops.[31] Finally, it drew up a number of disciplinary canons or decrees and concluded its sessions on August 25. The exact number of canons drawn up has long been a matter of dispute. All Greek and Latin collections, however, made in the fourth and fifth centuries are unanimous in attributing to this council only the twenty canons given below. This number is now universally accepted. Of the acts of the council only three fragments have come to us: the Creed or Symbol, the synodal letter, and

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[29] Our chief sources for the history of the council are the narratives of the early ecclesiastical historians, Eusebius (*Vita Constantini*), Socrates, Sozomen, Theodoret, Evagrius, and Rufinus, together with some important data preserved by St. Athanasius in his *De decretis synodi nicaeni* and in his *Epistola ad Afros*. A work of a later date, some time after 475, is the *Historia concilii nicaeni* of Gelasius of Cyzicus (Migne, *PG*, LXXXV, 1191–1360; Mansi, II, 759–946). A new edition is that of Löschcke-Heinemann, Leipzig, 1918. In reference to the work of Gelasius, cf. Bardenhewer, *Gesch. d. altkirchl. Literatur*, IV, 145–48. In connection with the sources, see also Turner, *Ecclesiae Occidentalis Monumenta Juris Antiquissima, canonum et conciliorum Graecorum interpretationes Latinae*, fasc. I, Parts I and II, Oxford, 1899, 1904; Mansi, *Conciliorum nova et amplissima collectio*, II, and Hardouin, *Conciliorum coll.*, I. *Literature:* Hefele-Leclercq, *Histoire des conciles*, I, 349–528; *id.*, "Die Akten d. I allg. Synode z. Nicäa," in *Tüb. Theolog. Quartalschrift*, XXXIII, 41–84; Batiffol, "Les sources de l'histoire du concile de Nicée," in *Échos d'Orient*, XXVIII (1925), 385–402; Kirsch, *Die Kirche in d. antiken griechisch-röm. Kulturwelt* (Freiburg, 1930), pp. 372–80; Bernoulli, *Das Konzil v. Nicäa*, Tübingen, 1921; Burn, *The Council of Nicaea*, London, 1925; Duchesne, *Early History of the Christian Church*, II (New York, 1920), 98–124; d'Alès, *Le Dogme de Nicée*, Paris, 1926; Haase, *Altchristl. Kirchengesch.* (Leipzig, 1925), pp. 247–76; Schwartz, *Kaiser Constantin u. d. christl. Kirche*, Leipzig, 1913; Bardy, "La politique religieuse de Constantin après le concile de Nicée," in *Revue des Sciences religieuse*, VIII (1928), 516–51; Funk, "Die Berufung d. ökumenischen Synoden d. Altertums," in *Kirchengeschl. Abhandl. u. Untersuchungen*, I (Paderborn, 1897), 39–86; *id.*, "Die päpstl. Bestätigung d. acht ersten allg. Synoden," *ibid.*, 87–121; Grumel, "Le Siège de Rome et le concile de Nicée; Convocation et présidence," in *Échos d'Orient*, XXVIII (1925), 411–23; Feder, "Die Zahl d. Bischöfe auf d. Konzil v. Nicäa," in *Zeitschr. f. kath. Theologie*, XXX (1906), 172–78; Kneller, "Das Papsttum auf d. ersten Konzil zu Nicäa," in *Stimmen aus Maria-Laach*, LXXVII (1909), 503–22; Jugie, "La dispute des philosophes paiens avec les Pères de Nicée," in *Échos d'Orient*, XXVIII (1925), 403–10; Newman, *Arians of the Fourth Century*; *Dict. de théologie cath.*; also the art. "Nicée," in *Dict. d'archéologie chrét. et de liturgie*, which contains a list of the bishops who signed the acts and also gives a good bibliography.

[30] Schmid, *Die Osterfestfrage auf d. ersten allg. Konzil v. Nicäa*, Wien, 1905; "Easter Controversy," in *Catholic Encyclopedia*.

[31] Socrates, I, 9.

the canons. Whether the acts were confirmed by a separate or special subsequent act of the pope is not known. We have no documentary evidence to that effect. The signatures of the papal legates must be considered as a sanction from the Roman See to the council's decisions.[32]

CANON I

Summary. Admission to holy orders is denied to those who voluntarily mutilate themselves.

Text. **If anyone has been mutilated (castrated) by surgeons during an illness or by barbarians, he is to remain in the clerical state; if, however, anyone in good health has mutilated himself, he is to be deposed after the matter has been duly investigated by the clergy, and in the future such a one is not to be promoted. As it is clear that the foregoing applies only to those who do such acts intentionally and venture to mutilate themselves, it follows that those who have been mutilated by barbarians or by their master, may, in accordance with the canon, be received into the clerical state, if otherwise they have been found worthy.**

Comment. This ordinance forbids the ordination of voluntary eunuchs and decrees the deposition of those who have voluntarily become such after ordination. It agrees with the prescriptions contained in the Apostolic canons 21–23 (*alias* 20–22). Beveridge, Van Espen, Hefele, and others maintain that it is to these the council alludes by the expression "in accordance with the canon." More recent critics, however, agree that the Apostolic Canons are posterior to the council. The late F. X. Funk, undeniably the foremost authority on early canonical texts, places their composition in the earliest years of the fifth century.[33] The allusion, therefore, is to a canon or ordinance which is anterior to the council but which has not come down to us. Occasion for such an ordinance existed long before the council. The case of Origen is well known. He was still a young man, a layman, when he mutilated himself; when Demetrius, his bishop, in consequence of that act declared him canonically disqualified for priestly orders, we may take it that his action was based on just such an ordinance.[34] From the first Apology of St. Justin we learn that nearly a hundred years before Origen

[32] Funk, "Die päpstl. Bestätigung d. acht ersten allg. Synoden," in *Kirchengeschichtl. Abhandl.*, I, 87–121; Blötzer, "Der hl. Stuhl u. d. ökumenischen Synoden d. Altertums," in *Zeitschr. f. kath. Theologie*, X (1886), 67–106.

[33] *Die Apostolischen Konstitutionen* (Rottenburg, 1891), pp. 180–206. *Dict. de théol. cath.*, II, 1605–26; *Dict. d'archéologie chrét. et de liturgie*, II, 1910–50; "Canons, Apostolic," in *Catholic Encyclopedia*. The best critical text of the Apostolic Canons is that of Funk, *Didascalia et Constitutiones Apostolorum*, I (Paderborn, 1906), 565–95. An English translation of these canons is given in the Ante-Nicene Library, VII (American edition, New York, 1899), 500–505.

[34] Eusebius, *Hist. eccl.*, VI, 8.

a young man of Alexandria sought permission from the prefect Felix to have himself mutilated by surgeons in order to disprove the charge of the heathens that the Christian religion encourages impurity. His request was refused.[35] There is no doubt that new occurrences moved the council to renew the old ordinance, and it is not at all improbable that it had in mind the case of Leontius when it made that renewal. According to St. Athanasius,[36] Leontius, afterward the notorious Arian bishop of Antioch, while a cleric in that city, lived with a woman named Eustolia, and this circumstance gave rise to scandalous rumors. He was forbidden by his bishop, Eustathius, to continue such cohabitation. To evade the prohibition and to be able to continue to live with her without suspicion of wrongdoing, he mutilated himself. For this act Eustathius suspended him. Possibly some persons, under the impression that nature must be conquered at all hazards, imprudently followed the example of Origen and mutilated themselves, or had themselves mutilated in order to teach the Scriptures to women without having the charge of impurity made against them.

The canon has reference only to the clergy and does not provide any penalty for the laity who mutilate themselves. However, the fact that the emperors, especially Constantine the Great and Hadrian, legislated against the practice, and the further fact that St. Jerome, St. John Chrysostom and others combated it as a means of preserving chastity, seems to indicate that the evil was widespread. Apostolic canon 24 (23) ordains that a layman who mutilates himself is excommunicated for a period of three years.

Exempt from the prohibitive scope of the canon are those cases in which mutilation was performed for reasons dictated by illness, or when inflicted by barbarians and slaveholders. A victim of the latter was Tigris, a priest of Constantinople.[37] Exempt also were those who had suffered mutilation during the persecution, or as infants, or who were eunuchs by birth, as was Dorotheus, a priest of Antioch.[38] According to Eusebius, Emperor Licinius forbade bishops to instruct women either publicly or privately,[39] and it is not at all unlikely that some of those who disregarded his prohibition he punished with mutilation. This was probably the punishment meted out to Paul of Neocaesarea in Syria, who, as already stated, suffered paralysis of both hands by the application of red hot irons.[40] This canon was often renewed by subsequent synods, among them that of Arles (*ca.* 452).[41]

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[35] *Apologia I*, 29.
[36] *Apologia de fuga*, c.26; Socrates, II, 26; Theodoret, II, 24.
[37] Sozomen, VIII, 24.
[38] Eusebius, *Hist. eccl.*, VII, 32.
[39] *De vita Constantini*, I, 53.
[40] Theodoret, I, 7.
[41] Hefele-Leclercq, II, 464. C.5, D.LV. Those not familiar with the reading of references to the *Corpus Juris Canonici*, will find them explained in the *Catholic En-*

CANON 2

Summary. Following the instruction of the apostle, neophytes are not to be promoted to the sacerdotal and episcopal dignities.

Text. Since many things have taken place that are contrary to the ecclesiastical canon, either through necessity or through the pressure of men, so that persons just converted from heathenism to the faith and instructed only for a short time, are led directly to the spiritual bath and at the same time with baptism are promoted to the sacerdotal or episcopal dignity, it appeared just that in the future such things should not be done, since for catechetical instruction and for further probation after baptism time is necessary. For it is a wise saying of the apostle: (a bishop should be) "not a neophyte; lest being puffed up with pride, he fall into the judgment and snare of the devil." [42] If in the future, however, a grave sin be discovered in a cleric and he be convicted by two or three witnesses, he must lay aside his clerical office. Any one who acts contrary to this (ordinance) and dares to be disobedient to this great council, runs the risk of being deposed from the clerical state.

Comment. This canon likewise presupposes an earlier one, traces of which have not yet been found. In renewing it the fathers of the council were actuated by a desire to insure the fitness and competence of those elevated to the higher ecclesiastical dignities. This necessary precaution had often been disregarded, with the result that in not a few instances undesirables found their way into the ranks of the ministry. Outside the cases of necessity, the council asserts that this disregard was brought about by "the pressure of men," that is, on the one hand by the schemes and intrigues of those bishops who, being tainted with Arianism, left nothing undone to thrust into vacancies creatures of their own choice and making. On the other hand, it is very probable that this pressure was exercised also by certain orthodox bishops with a view to secure the elevation of their favorites to ecclesiastical offices. St. Jerome referring to this evil writes: "Yesterday a catechumen, today a bishop; yesterday in the amphitheater, today in the church; in the evening in the circus, the next morning at the altar; but a short while ago a patron of actors, now a consecrator of virgins." [43] Again he says: "Bishops fill the ranks of the clergy not with the best men but with those who are most clever; they fill positions with their kindred and relatives as though they were distributing the offices of an

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cyclopedia in the article under that title. The edition used throughout this work is that of Friedberg, Leipzig, 1922.

[42] See I Tim. 3:6.

[43] *Epist. LXIX, 9, ad Oceanum.*

earthly concern; they bow to the dictates of wealth, and worst of all, they promote to the clerical dignity those who besmear them with flattery."[44]

The council does not seem to authorize exceptions; yet, that cases of urgent necessity arose in which this canon was set aside, is a matter of history. We have, for instance, the case of St. Ambrose, who was consecrated bishop of Milan eight days after his baptism. This part of the canon was renewed by the synods of Sardica (*ca.* 343) canon 10, and Laodicea (*ca.* 384) canon 3.

The expression, "a grave sin" (ψυχικόν τι ἁμάρτημα) is rather obscure. Not a few commentators translate this Greek phrase by *animale peccatum*, a rendering that does not clarify the difficulty, for it still leaves us in the dark as to what is precisely meant by *animale peccatum*. That the council had in mind an external and capital sin is indicated by the text and by the severity of the punishment attached to its commission. Catalani[45] avers that most probable is the opinion of those *qui docent per animale peccatum intelligi completam per actum externum luxuriam post baptismum susceptum*. This interpretation appears rather narrow, though it agrees with canon 30 of the Synod of Elvira (*ca.* 305) and with the decisions of other synods which forbade not only the ordination of *fornicarii* but also the retention in the clerical state of those who after ordination were found guilty of sins *contra sextum*. Perhaps a nearer approach to the mind of the council would be to include in the expression or phrase, all such crimes for the expiation of which there was formerly enjoined a public penance, as apostasy, adultery, homicide, which then as now were regarded as capital sins.

The expression, if "a grave sin be discovered in a cleric, etc.," points specifically to the prematurely ordained, but may be taken also as a general statement applicable to and including all clerics, whether they have been baptized and ordained prematurely or not. Finally, the punishment consequent upon disobedience to this decree applies both to the one ordaining and to the one ordained.

CANON 3

Summary. A cleric may not have living with him a woman other than one on whom suspicion cannot fall.

***Text*. This great council absolutely forbids a bishop, priest, deacon, or any other cleric to have living with him a woman (συνείσακτος) other than his mother, sister, or aunt, or any such person on whom suspicion cannot fall.**

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[44] *Adv. Jovinianum*, lib. I, 34.

[45] *Sacrosancta concilia oecumenica*, I (Romae, 1736), 66.

Comment. As it is probable that Leontius of Antioch was by his misconduct in some degree the occasion of the first canon of this series, so it is not improbable that he was to some extent responsible also for the present one. The purpose of the canon was to put an end to a moral disorder that had developed among the clergy. Since the first century there had been women, young women, who consecrated themselves to God by the vow of virginity. They lived at home or with relatives, and some lived alone by themselves, for convent life during the three centuries of persecution was out of the question; and even after that, as a fixed and general institution it was still something that the distant future had to provide.[46] They arranged their own life, each one as she pleased, and all that was expected of them was that they remain true to their vow and be a source of edification to others. There was no vow of poverty, hence they could retain and administer in any way they pleased properties that had come to them through inheritance or otherwise. They could have servants and slaves. Some of these women were rich, although most of them were poor. On the other hand, following their example, there were also men, ecclesiastics and laymen, vowed to chastity. Then there were the widowers, whose number was increased by the fact that second marriages were discountenanced. These two elements of ecclesiastical society seem to have needed in some measure each other's support, material as well as spiritual. Ecclesiastics and laymen vowed to chastity, as well as widowers, needed someone to care for their household affairs, duties for which women are most competent. To select a stranger would be to open the door to suspicion and evil report. If there was no relative, the choice of many naturally fell on such a virgin of the poorer class, who, by reason of her profession of virginity, was least likely to create unfavorable comment and who, more-

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[46] These Christian virgins were the pride and glory of the parents, a constant and living propitiatory sacrifice for the family. *Audistis, parentes,* says St. Ambrose, *quibus erudire virtutibus, quibus instituere disciplinis filias debeatis; ut habere possitis quarum meritis vestra delicta redimantur. Virgo Dei donum est, munus parentis, sacerdotium castitatis. Virgo matris hostia est, cujus quotidiano sacrificio vis divina placatur* (*De virg.*, lib. I, c.7). Because of their vow of virginity their life was compared to that of the angels, . . . *quae non nubent neque nubentur, erunt sicut angeli in coelo* (Matt. 22:30). *Nemo ergo miretur si angelis comparentur, quae angelorum Domino copulantur* (*ibid.*, c.3). They were under the special care and protection of the Church. A synod of Hippo (393) ordained that virgins consecrated to God, when they are separated from their parents or have no parents to protect them, be commended by the bishop, or in his absence by the priest, to reputable and responsible persons, lest they become vagrants and injure the reputation of the Church (*Capitul. regum Franc.*, ed. Baluzius, Parisiis, 1677, I, 227). Toward the end of the second or at the beginning of the third century, they formed a special class in the Church, had a special place in the church at divine service, and received holy communion before the laity. At the beginning of the fourth century, many, if not most of them, lived in community houses (παρθενῶνες). Tertullian distinguishes between public and private profession, the former made in the assembly of the faithful, the latter known only to God.

over, would find especially in the house of a cleric protection against a licentious society and opportunities for spiritual advancement. There were at times, of course, also other reasons for such cohabitation. Clerics and laymen would live with virgins under pretense of charity; take care of their affairs, if rich, or maintain them in charity, if poor.[47] In the case of the former, the choice was more frequently a monk or a layman also vowed to chastity, who would also act as protector and adviser. No less important in this respect was the custom that prevailed among a class of Christian women, virgins and widows, to contract with unmarried men a sort of spiritual marriage; they lived together, not in any carnal relationship, but for mutual spiritual encouragement.[48] Sometimes these women were known as sisters (*sorores*), to indicate that they lived with men in a kind of spiritual relationship. Thus the Synod of Ancyra (314) in canon 19 forbade virgins vowed to chastity to live with men as sisters. Then again, perhaps to circumvent the law or to escape suspicion, they were known as *adoptivae*. Thus it happened that during the early centuries many unmarried clerics and laymen dwelt with such women under one roof. Although in the beginning this mode of life was accepted without disapproval and was even edifying, later, however, what had begun with a perfectly good and pure intention, often developed into abuses and scandals of a most serious nature. Besides the term συνείσακτος, used in the present canon, they were known also as *agapetae* (ἀγαπῆται, loved ones), which seems to have been of a later origin. Like the former, it also was a term of derision fastened upon them by the people, and was inspired no doubt by certain outstanding abuses combined with evil reports which such cohabitations naturally create. It was such women and situations that St. Jerome had in mind when he wrote: "How comes this pest of the *agapetae* to be in the Church? Whence these unwedded wives? These novel concubines, harlots clinging to a single partner? One house and one room they occupy and often one bed, and then they call us suspicious if we surmise anything amiss. A brother leaves his virgin sister; a virgin leaves her unmarried brother and seeks a brother in a stranger. Both declare they have but one object, to find spiritual encouragement in those who are not of their kin, but their aim is to indulge in carnal intercourse." [49]

The council in the present canon concerns itself with clerics only. Its characterization of the women who lived with them was not a new one. It had been a current expression for some time, had been coined by the

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[47] A synod of Carthage (*ca.* 349) in canons 3 and 4 forbade clerics and virgins, also widows and widowers, to live together with men and women *sub praetextu caritatis et dilectionis*. Mansi, III, 154.

[48] Labriolle, "Le mariage spirituel dans l'antiquité chrétienne," in *Revue historique*, CXXXVII (1921), 204–25; Leclercq, *Dict. d' archéol. chrét. et de liturgie*, X, 1881 ff.

[49] *Epist., XXII,* 24, *ad Eustochium.*

people and accepted by the learned. About sixty years earlier a synod of Antioch had deposed Paul of Samosata, the bishop of that city, for heresy and for the scandal he was giving by keeping in his house several young women, an example that was followed by his clergy, some of whom had been betrayed into sin and others had incurred suspicion.[50] The Antiochenes nicknamed these women *syneisactoi* (συνείσακτοι), that is, "brought in with," a term coined by them. Its literal Latin translation is *subintroductae*, used for the first time, so far as we know, by Atticus, patriarch of Constantinople, in his translation of the Nicene decrees.[51] While in its origin the Greek sobriquet applied only to women living with clerics, it was not long before its application was extended to such women who lived with laymen, whether vowed to chastity or not. Statements to the effect that during its career it applied to the former only, have their basis in the fact that this Nicene canon concerned itself with clerics only and in the further fact that the canon was often renewed, but they have no foundation in history. At a later period this might have been true to some extent, but not during the third and fourth centuries. In the city of Constantinople the evil had so deeply entrenched itself that St. John Chrysostom, while its bishop, wrote two pastoral instructions against it: (a) *Adversus eos qui apud se habent virgines subintroductas*, and (b) *Quod regulares feminae viris cohabitare non debeant.*[52] These treatises cover general directions, but their contents leave no doubt that they were addressed primarily to laymen. About the year 254 there was brought to the attention of St. Cyprian the case of several virgins vowed to chastity, living on terms of the closest familiarity with laymen among whom was a deacon.[53] At that time the Antiochene appellation was still unborn; had it been blessed however with an earlier birth, and had it or its equivalent been known in the locality where the incident occurred, we may be certain that the people would not have discriminated in their application of it. Neither can it be maintained that the term was applied only to virgins vowed to chastity. Nowhere are we told that the female companions of Paul of Samosata were such virgins; which is equally true of the female companion of Leontius of Antioch.

In the West the usual expression was *mulier* or *femina extranea*, or simply *extranea*. The Spanish Synod of Elvira (*ca.* 305) in canon 27 forbade all clerics to have *extraneae* living with them, and permitted them to have

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[50] Eusebius, *Hist. eccl.*, VII, 30; Bardy, *Paul de Samosate* (Louvain, 1923), pp. 187–88.

[51] Quadt, "Subintroducta mulier," in *Zeitschr. f. kath. Theol.*, XXXIV (1910), 227–33.

[52] Migne, *PG*, XLVII, 495–532. Gregory of Nazianzus, *Epigr.*, 10–20; Epiphanius, *Haereses*, LXIII, 2; Gregory of Nyssa, *De virginitate*, 23.

[53] *Epist.* IV, ed. Hartel. Achelis, *Virgines subintroductae. Ein Beitrag zu I Cor.*, vii (Leipzig, 1902), 7 ff. It is rather strange how Dr. Achelis has worked himself into the conviction that the institution here considered existed already in Apostolic times and was distinctly referred to or rather approved by St. Paul in I Cor. 7:36–38.

in their homes only their sister or daughter, and this on two conditions, (a) that they are virgins and (b) that they are vowed to chastity.[54] The Third Synod of Carthage (397) in canon 17 excluded from the cleric's home all *feminae extraneae* and allowed him to have only his mother, grandmother, aunt, and niece.[55] The Synod of Arles (452) forbade under penalty of excommunication any cleric from the deacon upward to have with him any woman other than his grandmother, mother, daughter, niece, or, in case he was married, his wife, provided she had taken the vow of chastity;[56] while that of Agde (506) in canon 10 allowed him his mother, sister, daughter, or niece.[57] The Spanish Synod of Gerona (517) in canon 7 ordained that when an unmarried person is raised to the priesthood, he may have with him only his mother or sister; should he have neither, then he must be content with a male servant or friend.[58] The Second Synod of Toledo (531) in canon 3 was more severe. It forbade all clerics from the subdeacon upward to live with a woman, whether freeborn, emancipated, or a slave. Only his mother, sister, or other near relative was allowed him. Had he no relatives, then the female servant must live in another house and under no circumstances enter his private rooms. Anyone acting in contravention of this decision was not only suspended and denied entrance into the church, but he was absolutely forbidden to have intercourse of any kind, including that of speech, with Catholics, even with the laity.[59] The Synod of Tours (567) in canon 10 decreed that no bishop, priest, deacon, or subdeacon may have in his house any woman other than his mother, sister, or daughter,[60] and the fourth of Toledo (633) in canon 42 allowed him to have his mother, sister, daughter, or aunt.[61] In the East, when St. Basil, about 370, commanded Paregorius, a seventy-year-old priest in Cappadocia, to discharge his servant, a young woman, he pointed to this Nicene canon and insisted on its observance on pain of deposition and excommunication.[62]

[54] In the early Church it frequently happened that married men were admitted to the priesthood. This explains the statement found in many synodal decrees that clerics may have in their homes their own daughters. Marriage after ordination to the priesthood was definitely forbidden (Neocaesarea, canon 1; Apost. canon 26; Apost. Const., VI, 17). Among the lower orders of the clergy it was admitted. Deacons were permitted at the reception of the diaconate to state their intention to marry, without incurring any disqualification. If they remained silent and did not so express their intention, and married after the reception of that order, they were disqualified (Ancyra, canon 10).

[55] C. 27, D. LXXXI.

[56] Mansi, VII, 879.

[57] *Idem*, VIII, 326.

[58] *Idem*, VIII, 549.

[59] *Idem*, VIII, 785.

[60] *Idem*, IX, 794.

[61] *Idem*, X, 630.

[62] St. Basil, *Epist.* LV.

The fathers of the council did not consider the practice in itself as sinful, but condemned it because of its tendency to sin and scandal. The canon includes not only the *syneisactoi* or *mulieres subintroductae* properly and specifically so called, but also any and every woman who is not the mother, sister, or aunt of the cleric or one against whom a suspicion cannot be lodged.

CANON 4

Summary. Bishops are to be chosen by all the bishops of a province. In case of necessity by three. Confirmation belongs to the metropolitan.

Text. **A bishop is by all means to be chosen (elected) by all the bishops of the eparchy (province); should this, however, be difficult, either on account of an urgent necessity or because of the length of the journey, then at least three shall assemble and the votes of the absent (bishops) having been communicated in writing, let the consecration take place. The confirmation, however, of all that has taken place belongs in each eparchy to the metropolitan.**

Comment. In the division of its vast territory into provinces, the Church found it convenient, as a rule, to follow the civil boundaries. This policy was inaugurated by the Apostles, who generally preached the Gospel first in the chief city or capital of a province and then regarded all the faithful of that province as a unit in a religious or ecclesiastical sense, just as its inhabitants were regarded by the state as a unit in a civil sense. St. Paul, for instance, wrote "to the Church of God that is at Corinth, with all the saints that are in all Achaia." [63] Here the Apostle considers all the faithful of the civil province of Achaia as a unit and places at the head of all the Churches in Achaia the Church of the metropolitan city of Corinth. Under these circumstances the bishops of a province came to consider themselves more and more as a separate geographical entity with a certain measure of ecclesiastical autonomy vested in the bishop of the metropolis, who held a position of pre-eminence over all the other bishops of the province, (a) because of the civil importance of that city and (b) because

[63] See II Cor. 1:1. In Romans, 15:26, St. Paul speaks of the Churches of Macedonia and Achaia separately, indicating that the provinces of which Thessalonica and Corinth were the metropolitan cities, were civilly distinct. The Apocalypse is addressed to the seven Churches forming a part of the province of Asia, of which Ephesus was the metropolis. For that reason St. John gives first place to the bishop of Ephesus (Apoc. 2:1). St. Peter begins his First Epistle thus: "Peter, an apostle of Jesus Christ, to the strangers dispersed through Pontus, Galatia, Cappadocia, Asia, and Bithynia, elect." That division was exactly the provincial division of the Roman Empire. Lübeck, "Reichseinteilung u. kirchliche Hierarchie d. Orients bis z. Ausgange d. 4. Jahrh.," in *Kirchengeschichtl. Studien* V, Münster, 1901; Cobham, *The Patriarchs of Constantinople* (Cambridge, 1911), pp. 41–87.

in that place was the mother Church to which all others in the province owed their origin. This civil importance of the metropolitan city was emphasized in canon 9 of the Synod of Antioch (341), which says: "The bishops of every province should know that the bishop of the metropolis has also the supervision of the entire province, because the metropolis is the commercial center for all people engaged in business within the province."

With regard to the participation of the provincial bishops in the election of new bishops, the council found it necessary to decide, (a) that no one bishop of the province can elect another; (b) for this at least three are required; (c) these may not undertake the election without the consent of those absent, whose votes must be communicated in writing; and (d) there must be the approval of the metropolitan.[64] The occasion for this canon was most probably given by Meletius, bishop of Lycopolis in Egypt, who without the participation of the other bishops of the province and without the approval of the metropolitan, chose and consecrated bishops and thus

[64] In Apostolic times bishops were chosen by the Apostles themselves. In the period immediately following, this duty devolved upon men like Titus and Timothy, the immediate successors of the Apostles, but their choice was subject in a way to the approval of the people, who had to bear witness to the worthiness of the candidate. After the death of these men the practice necessarily underwent a change. The neighboring bishops of the province came together in the city in which the see was vacant. The new bishop was elected *plebe presente*, because the people, that is, the clergy and laity, *singulorum vitam plenissime novit* and have looked into the doings of each one as respects his habitual conduct (Cyprian, *Epist.*, LXVII, 5, ed. Hartel). The people had the right of nominating the candidate; to the bishops belonged the right of decision. St. Cyprian calls this "the practice delivered from divine tradition and Apostolic observance, which is also maintained among us, and almost throughout all the provinces." Our canon makes no mention of the popular element in episcopal elections. However, that would not justify the conclusion that the council wished to eliminate it. In practice the canon was variously interpreted by the Eastern and Western Churches. The Greeks, after their bitter experience with the interference of secular influences in such elections, were not inclined to see in that canon a continuation of the old practice of popular participation, but wished to place such elections entirely in the hands of the bishops. The Second Council of Nicaea (787) in canon 3 interpreted the canon in the sense that a bishop is to be elected by the bishops only, and threatened with deposition anyone who obtained a bishopric with the aid of secular influence. In the same sense it was interpreted by the Fourth Council of Constantinople (869) in canon 22.

In the Latin Church the clergy and laity continued to participate in episcopal elections till the twelfth century, though for some time such participation had been only a nominal one. The Second Lateran Council (1139) excluded not only them but the bishops also and placed such elections entirely in the hands of the cathedral chapter, which legislation was sanctioned by the Decretals. Funk, "Die Bischofswahlen im christl. Altertum u. im Anfang des M-A.," in *Kirchengeschichtl. Abhandl.* I (Paderborn, 1897), 23–39; Hefele, "Die Bischofswahlen in d. ersten christl. Jahrh.," in *Beiträge zur Kirchengeschichte* I (Tübingen, 1864), 140–44; Hassett, "Primitive Episcopal Elections," in *Catholic University Bulletin*, III (1897), 404–20, IV (1898), 337–65; Peries, "Episcopal Elections. Former Practices; Modern Discipline," in *Am. Cath. Quarterly Review*, XXI (1896), 81–105; Imbart de la Tour, *Les élections épiscopales dans l'ancienne France*, Paris, 1890.

brought about the Meletian Schism. At the time of the council the Meletians counted in Egypt about twenty-nine bishops.

The rule requiring the presence of at least three bishops, with the written consent of those absent, applies both to the election and consecration of a bishop. While it made impromptu and clandestine elections and consecrations more difficult, the abuse, nevertheless, continued to some extent, as is evident from subsequent synodal prohibitions. As to the elective rights of the clergy and laity, the council supposes that these have given their testimony and expressed their wishes, and confines itself in this canon to a later stage of the process. Moreover, the decision of the council seems to refer to the election and consecration of a bishop, since the latter took place immediately after the election.[65]

The provision of the canon that for consecration at least three bishops are required, had a precedent in canon 20 of the Synod of Arles (314); otherwise it was substantially renewed by the synods of Laodicea (343–381) in canon 12, and Antioch (341) in canon 19, the Fourth Synod of Toledo (633) in canon 19, and the Second General Council of Nicaea (787) in canon 3.

CANON 5

Summary. Those excommunicated by one bishop cannot be released from that censure by another. The matter should be investigated as to whether the censure was imposed through animosity. Every province is to hold two synods annually.

Text. **Regarding those who have been excommunicated, whether of the clergy or the laity, the sentence pronounced by the bishop of any province is to remain in force, in accordance with the canon which says: He who has been excommunicated by one, is not to be admitted by others. However, it should be investigated whether or not the censure imposed was inspired by a narrow-mindedness or quarrelsome disposition or any other spirit of animosity on the part of the bishop. Moreover, in order that this investigation may take place, it seemed proper to decree that in each province two synods be held annually, that through the general assembly of all the bishops of the province such investigation may be undertaken, that everyone may know that those whose disobedience toward the bishop can be proved, are justly excommunicated (and will remain so) till it shall please the assembly of bishops to modify the sentence. The synods, however, are to be held as follows: one before Quadragesima, so that with the removal of every sentiment of meanness of spirit, an acceptable gift may be offered to God; the other in the autumn of the year.**

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[65] Van Espen, *Jus ecclesiasticum universum*, III, 83; Catalani, *op. cit.*, I, 72. In reference to this canon, cf. also the *Distinctio* LXIV of Gratian.

Comment. This canon deals with two distinct questions: (a) the state of the excommunicated and (b) the holding of two provincial synods every year. As to the first, the council decreed that no excommunicated person, whether lay or cleric, who has been censured by one bishop, shall be reinstated by another; the censure is to remain in force till it is withdrawn by the synod or, of course, by the one who imposed it. The decree is based on the principle of a united episcopate. The principle had been already fully established in ante-Nicene ecclesiastical legislation, for not only does our canon make reference to an earlier ordinance, but we have the example of Pope Cornelius (251–53), who refused to reinstate at Rome the heretic Felicissimus who had been excommunicated by St. Cyprian and a synod of African bishops.[66] The Synod of Elvira in canon 53 threatened with deposition any bishop who should reinstate a person excommunicated by another bishop, at least without the consent of the other bishop. No less explicit in this connection is canon 16 of the Synod of Arles (314).[67]

The council recognized the liability of bishops to misuse their authority in the administration of ecclesiastical law; hence it decreed that provincial synods be held twice a year to investigate complaints in the matter of excommunication. The Synod of Agde (506) in canon 3 made provision against this, and the fifth of Orleans (549) in canon 2 forbade bishops to excommunicate an orthodox person *pro parvis et levibus causis.* Our canon seems almost to give the impression that these synods are to concern themselves solely with the business of investigating cases of alleged unjust excommunication. However, the second general council (381) in canon 2 rightly interprets this Nicene decree when it extends the duty of a provincial synod to an examination of the affairs of the entire province.

CANON 6

Summary. The prerogatives of the Churches of Alexandria and Antioch, and those in other eparchies are to be preserved. If anyone has been made a bishop without the approval of the metropolitan, he shall not exercise the office. In the election of a bishop the votes of the majority shall prevail.

Text. **Let the ancient custom that obtains in Egypt, Libya, and Pentapolis, namely, that the bishop of Alexandria has the supervision of all these (provinces), be strictly adhered to, since this is also the custom of the bishop of Rome. In like manner, in respect to Antioch and the other provinces, let each Church retain its prerogatives. It is unmistakably clear that if anyone has been made bishop without the approval of the metropolitan, this great council does not**

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[66] Cyprian, *Epist.* LIX; ed. Hartel.

[67] Kober, *Der Kirchenbann* (Tübingen, 1863), pp. 188, 221, 452. Cf. also the synods of Antioch, canon 6, and Sardica, canon 13.

permit him to exercise the office of bishop. If, however, the election, which was participated in by all with discernment and in accordance with the rules of the Church, is by reason of a contentious spirit opposed by two or three, the votes of the majority shall prevail.

Comment. In canons 4 and 5 the council dealt with the ordinary ecclesiastical provinces and their metropolitans, and with provincial synods. Since, however, there were also Churches with a pre-eminence or high jurisdiction recognized by a number of ecclesiastical provinces, the council in canons 6 and 7 confirmed the rights accorded by custom to such Churches. These Churches correspond with the future patriarchates and exarchates. Thus some metropolitans ruled over provinces of suffragan bishops, and above these metropolitans stood the two great patriarchs of Alexandria and Antioch. In the West there was as yet nothing to correspond with the metropolitans, except perhaps in Africa.[68]

Egypt in 325 numbered four civil and ecclesiastical provinces, each having its own metropolitan, namely, Egypt, Thebaid, Libya, and Pentapolis (Lower Libya). Our canon mentions only three, because the term Egypt at that time was often used in a wide sense and understood to embrace two provinces, Egypt in a narrow sense and Thebaid, that is, Upper Egypt. It had been a long-standing custom for the metropolitans of the provinces of Thebaid, Libya, and Pentapolis and their suffragan bishops, to look up to the bishop of the mother Church of all Egypt as possessing jurisdiction not only over his own province of Egypt, but as exercising a certain measure of authority also over the other three provinces. In the present canon, therefore, the council confirmed this ancient custom and guaranteed to the bishop of Alexandria an exceptional rank with extensive powers. He has the right to consecrate all the metropolitans and bishops of the other three provinces, once the election of the latter had been approved by the metropolitan, while in other Churches enjoying a hierarchical pre-eminence, this function of consecrating bishops devolved upon the metropolitan himself.

[68] The term patriarch is used here for want of a better one. At the time of the council and for a long time afterward, there was no patriarch as we understand that term today. In those days it was merely a Christian title of honor that might have been and actually was applied to any venerable bishop. Gregory of Nazianzus (d. *ca.* 389) says: "the older bishops or, to speak more correctly, the patriarchs" (*Orat.* XLII, 23). Emperor Theodosius II used it in a letter to Pope Leo I (Mansi, VI, 68). The council speaks merely of the bishop of Alexandria; but in rank he stood on a higher plane than an ordinary bishop. He was a metropolitan, and of the four metropolitans in Egypt he was the chief metropolitan. Perhaps in the language of today it would be more appropriate to call them archmetropolitans, yet it is just as well to adhere to the name which eventually became their special title. Cf. Fortescue, *The Orthodox Eastern Church*, pp. 5–25.

The immediate occasion of this canon was Meletius bishop of Lycopolis in Egypt, who had been deposed by Peter of Alexandria on various charges, the most grievous of which was his denial of the faith during the Diocletian persecution. While Peter was in concealment during the persecution, Meletius usurped his patriarchal functions by arrogating the right to consecrate bishops to sees not vacant, their incumbents being in prison for the faith. After Peter's martyrdom, the usurper transferred his opposition and abuse to Achillas and Alexander, Peter's immediate successors. By surrounding himself with the disaffected elements of the country and later forming a coalition with the partisans of Arius, he brought about the Meletian Schism.

The first part of this canon has been the subject of much discussion. Many volumes have been written to tell us what it means. Briefly, the cause of the trouble is the short phrase in the first sentence of the canon, "since this is also the custom of the bishop of Rome" (ἐπειδὴ καὶ τῷ ἐν τῇ Ῥώμῃ ἐπισκόπῳ τοῦτο σύνηθές ἐστιν), and the stumblingblock or kernel of the difficulty in this phrase is the demonstrative τοῦτο, "this." What does this demonstrative refer to? Most commentators, including Hefele, understand it as having reference to a similar ancient custom in Rome, and hence translate the sentence as follows: "Let the ancient custom that obtains in Egypt, etc., be strictly adhered to, because there is a similar custom for the bishop of Rome," that is, because the bishop of Rome exercises a similar supervision over the Western provinces. Others understand the demonstrative to refer to the supervision of the Egyptian provinces and translate the sentence thus: "Let the ancient custom that obtains in Egypt, etc., be strictly adhered to, since this is also the custom of the bishop of Rome," that is, because it is also the custom of the bishop of Rome to recognize the Alexandrian bishop's right to have supervision of the Egyptian provinces. Considering the grammatical structure of the Greek text (for translations are out of the question here, most of them being inaccurate), and also the logical sequence of the sentence, this latter interpretation seems to be the only plausible one that can be given to that passage. The authority of the bishop of Alexandria had been questioned and contested by Meletius and his bishops. The council, therefore, in this canon came to his aid by decreeing that his authority must be respected, (1) because it was ancient, and (2) because it had always been recognized by the bishop of Rome. Against the first interpretation given above, it may also be argued that at the time of the council there were no organized Western ecclesiastical provinces such as existed in the East. There was as yet no classification of bishops according to provinces and their subordination to metropolitans or to bishops of civil metropolitan cities. Hence any argument built on a comparison be-

tween the East and West in this respect has no foundation in history.[69]

Similarly the rights of the Church of Antioch were to be maintained. It is not stated precisely what these rights were. However, from remote antiquity the bishop of Antioch had exercised a certain jurisdiction over many provinces in the eastern extremity of the Roman Empire. Tradition has it that his supremacy extended even beyond the limits of the Empire. At any rate, the Council of Constantinople (381) in canon 2 restricted his jurisdiction to the civil diocese of the Orient, which at that time embraced fifteen civil provinces. Whether or not this civil diocese comprised all of these provinces in 325 is a matter of little importance here. Certain it is that our canon attributes to the bishop of Antioch a supremacy or jurisdiction over many provinces, each having its own metropolitan. It would seem, then, that the council recognized and secured to him the same jurisdiction that it recognized and secured to the bishop of Alexandria over the provinces of Egypt.[70]

Our canon requires also that the rights of the Churches in the other eparchies be maintained. The term "eparchies" here is far from clear. It cannot be accepted as referring to ordinary provinces, since the council had already dealt with these in canon 4. The general opinion is that the reference is to the civil dioceses of Thrace, Asia, and Pontus, whose bishops, known as exarchs or, as we should say today, primates, resided at Heraclea, Ephesus, and Caesarea respectively. This interpretation is supported by canon 2 of the Council of Constantinople (381), which says: "The bishops of the diocese of Asia must look after the interests of Asia only; those of Pontus, after the interests of Pontus; and those of Thrace, after the interests of Thrace." What the rights of these Churches were, we are not told. The common interpretation of this part of the canon is that the council aimed to secure to the bishops of Heraclea, Ephesus, and Caesarea the same jurisdiction over the provinces of the civil dioceses of Thrace, Asia, and Pontus as the bishops of Alexandria and Antioch exercised over the provinces of the civil dioceses of Egypt and the East. This interpretation, however, is not without its difficulties, which cannot be entered into here.[71]

The council forbade that anyone be made bishop without the approval of the metropolitan. This rule had already been made in canon 4, but is here repeated to safeguard the rights of the metropolitans against possible

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[69] For an excellent study of this part of the canon, cf. Loughlin, "The Sixth Nicene Canon and the Papacy," in *Am. Cath. Quarterly Review*, V (1880), 220–39.

[70] The standard work for the history of the Eastern patriarchates is that of Le Quien, *Oriens christianus in IV patriarchatus digestus*, Paris, 1740. Outlines are given by Duchesne, *Christian Worship* (London, 1904), pp. 1–30; Fortescue, *The Orthodox Eastern Church*, pp. 1–50.

[71] For the geographical divisions involved in this canon, cf. Fortescue, pp. 21–25.

encroachments on the part of the chief metropolitans or patriarchs. The meaning, therefore, is this: no one may be consecrated bishop, not even by the chief metropolitan or patriarch, without the approval of the metropolitan under whose jurisdiction the candidate resides.[72]

CANON 7

Summary. The bishop of Jerusalem is to have precedence, without, however, infringing on the rights of the metropolis.

Text. **Since custom and ancient tradition show that the bishop of Aelia (Jerusalem) ought to be honored, he shall have precedence, without, however, infringing on the rights of the metropolis.**

Comment. That the position of the bishop of Jerusalem from the earliest years was an exceptional one, goes without saying. This was due to the fact that his jurisdiction covered a territory hallowed by the visible presence of the Redeemer. Moreover, after the destruction of the city by Titus in the year 70, when the Christians who had fled to the little Greek town of Pella in Peraea returned, they met for worship in the house of John Mark and his mother Mary, where they had been accustomed to meet before.[73] This house with a few other buildings, we are told, had escaped the general destruction of the city. Here the Christians worshiped. It was the first Christian church. From here the first Christian bishops ruled the Church of Jerusalem. It was the most venerable spot in all Christendom, a circumstance that naturally added to the unique dignity of the Church and its bishop. Aelia Capitolina, erected by Hadrian on the ruins of the city, was a town of no civil importance in the Empire. But no matter what its name or vicissitudes, to the Christians it was always Jerusalem, the Holy City. Naturally their reverence for the holy places contributed to raise the importance of the city and that of its Church and bishop.

The explanation of this brief canon presents no little difficulty. Evidently the council wishes to confirm an ancient right of the bishop of Jerusalem to enjoy certain honors, to have precedence, but in what these honors or this precedence precisely consisted, is difficult to determine. Perhaps this exceptional place of honor was a precedence on the occasion of ecclesiastical councils, when the bishop of Jerusalem sat next to the patriarchs; which place of honor, nevertheless, was not to interfere with the rights of the metropolitan (of Caesarea in Palestine). The situation thus created, giving a suffragan honorary precedence over his metropoli-

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[72] For an exhaustive commentary on this canon, cf. Hefele-Leclercq, I, Appendix VIII.

[73] Acts 12:12 f.

tan, was an anomalous one. It was a source of friction that was removed only when Jerusalem became a patriarchate in 451.

CANON 8

Summary. The Novatianist clergy who return to the Catholic Church may, after they have certified in writing that they will accept and follow the teachings of the Church and after they have received the imposition of hands, remain in the clerical state.

Text. **In regard to those who call themselves Cathari, should they desire to enter the Catholic and Apostolic Church, this holy and great council decrees that they receive the imposition of hands and then remain in the clerical state; above all, however, they must certify in writing that they will accept and follow the teachings of the Catholic and Apostolic Church, that is, hold communion with those who have married a second time, as well as with those who lapsed in time of persecution and for whom a definite period (of penance) has been fixed and an occasion (of reconciliation) determined. In all things, therefore, must they follow the teachings of the Catholic Church. In places, then, where there are only ecclesiastics of their party, be it in villages or in cities, these are to remain in the clerical state and retain their positions; but if a Catholic bishop or priest be already there, and there come to him clerics from that party, it is clear that the bishop of the Catholic Church retains his episcopal dignity, but the bishop of the so-called Cathari is to have the sacerdotal dignity, if the bishop deems it best not to permit him to take part in the dignity of the episcopal title. If he is dissatisfied with this, then he (the Catholic bishop) is to assign him as a rural bishop or priest, so that he may appear as a regular member of the clergy and thus avoid the presence of two bishops in a city.**

Comment. The Cathari mentioned here are the Novatianists, an heretical sect founded during the Decian persecution by Novatian, a Roman priest, who had himself consecrated bishop and then made himself antipope in opposition to Pope Cornelius (251–53). Accusing the Church of being too lenient in the restoration of those who had apostatized during the persecution, Novatian adopted a policy of extreme rigorism. At first a schismatic, he became a heretic by denying that the Church has the power to absolve those who lapsed during the persecution. His followers, who called themselves *καθαροί*, that is, "The Pure," or "Puritans" as we would call them today, extended this teaching to the three capital sins (idolatry, adultery or fornication, and homicide), thus adopting the principle of the Montanists that all such sins committed after baptism are irremissible. The Novatianists strove for the realization of an ideal church on earth, from which certain classes of offenders were necessarily excluded, not because

they were beyond the reach of God's pardon, but because they were unfit to associate with his saints and to be members of his pure community on earth. They denied the right of the Church to receive such, not the possibility of divine mercy hereafter. Most of them forbade second marriages, holding that such or successive marriages, even when contracted after the death of one of the parties, are adultery.

It is question in this canon of the Novatianist clergy. The council recognized their orders and decided that on making their submission to the teachings of the Catholic Church, they are, after having received the imposition of hands, to continue in the clerical state in the Catholic Church. The imposition of hands spoken of here has been variously interpreted. Following Zonaras and Balsamon, two foremost Greek canonists of the twelfth century, Beveridge [74] and Van Espen [75] understood it as referring to the Novatianist ordination already received; so that the meaning would be: whosoever has been ordained by the Novatianists is to remain in the clerical state. Gratian, on the other hand, understood it as requiring a reordination.[76] Against these two interpretations, there is the more common and consistent one, that the council prescribed not a *nova ordinatio* but merely a *benedictio*, a laying on of hands for the purpose of reconciliation, a procedure that the council had already prescribed for the reconciliation of the Meletians,[77] and that was a very common procedure in the Churches of the West for reconciling heretics and schismatics. The council decided further that the Novatianists, on entering the Catholic Church, must declare in writing their subscription to all her teachings, which included communion with those who had married a second time [78] and with

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[74] *Synodicon sive Pandectae canonum* II (Oxonii, 1672), *Annotationes*, 67.

[75] *Op. cit.*, III, 87.

[76] C.8, C.I, q.7.

[77] Socrates, I, 9; Theodoret, I, 9.

[78] While the Latin Church in the matter of second and subsequent marriages has always adhered to the teaching of St. Paul (I Cor. 7:8, 9, 39), in the East they were looked upon with suspicion and disfavor, and at times even condemned. The synods of Neocaesarea in canons 3 and 7 and Laodicea in canon 1, though admitting the validity of such marriages, regarded those who contracted them as bigamists and imposed a severe canonical penance. Bigamist must be understood in the strict canonical sense, as signifying the marriage of a man to a second wife after the death of the first, in contradistinction to polygamy, the having of two or more wives simultaneously. The application of the term bigamy to what is more properly called polygamy, as is done in criminal law today, is a corruption of the true meaning of the term (Blackstone, lib. IV, n. 163). Athenagoras (*Supplicatio pro Christianis*, c. 33) called second marriages "decent adultery" (εὐπρεπὴς μοιχεία). St. Basil (*Epist.* CLXXXVIII) condemned them and demanded severe canonical penalties for those who contract them, while Gregory of Nazianzus (*Orat.* XXXVII, c.7) called second marriage a toleration, a third a transgression. Under Patriarch Nicholas I of Constantinople (d. 925) the Greek Church declared fourth and, under certain conditions, third marriages invalid. This legislation was approved by Pope John X but is no longer strictly enforced.

those who had apostatized in time of persecution.[79] Then, to remove as far as possible the stumblingblock and facilitate their submission, it is added in regard to the *lapsi*, that before they are restored to communion they must perform a long and severe penance.

The comparative mildness of the council toward the Novatianists was inspired in all probability by its respect for Acesius their bishop, who resided at Constantinople and attended the council. On account of his strict and exemplary life he was held in high esteem by Constantine the Great

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[79] The question regarding the reconciliation of apostates in the early Latin Church has received not a little attention from critics during the last three or four decades. Apart from minor agreements, the general results of their investigations have crystallized in two opposing schools. One of these maintains that the policy of the Church toward the *lapsi* was one of stern exclusion, that is, it was a well established principle in the Church during the second century and the first half of the third, that apostates (and also adulterers and homicides), even if they did penance and sincerely manifested the best dispositions, were not again taken back into the Church or admitted to holy communion even *in extremis*. According to this school the edict of Pope Callistus admitting adulterers, and a similar change on the part of Pope Cornelius in the direction of leniency toward apostates, were, if not a complete reversal of the traditional policy respecting the treatment of capital offenders, certainly an innovation that seemed to some to border on the revolutionary. The other school sees in the early discipline of the Western Church a milder attitude, which left the door of the Church open to such offenders.

A consideration of the respective claims of these positions in the light of a critical examination of the sources, forces us, in the writer's judgment, to but one conclusion; namely, that while the attitude of the early Church toward apostates, or for that matter also toward adulterers and homicides, was by no means a lenient one, it cannot be characterized as one of stern and uncompromising exclusion. The attitude was not a lenient one because, in the face of the heathen world and of the recurring possibilities of persecution, the Church could not afford to be lenient. On the other hand, that the refusal of reconciliation in this life to capital offenders after baptism was a well established principle in the Church, is a statement that our sources do not support. That early writers contain a few passages which seem to reflect an attitude of exclusion, there can be no question. But they are not of sufficient number and weight to justify the building thereon of a principle. In canon 13 of this series the council insists on the observance of "the ancient canonical law" that if anyone (of the *lapsi*) be near death he shall not be deprived of the Viaticum if he asks for it and is properly disposed for its reception (cf. Ancyra, canon 6). How ancient that law was we do not know; it expresses, however, the teaching and conviction of the Church at all times. Certainly no one would venture the statement that the extreme rigorism that pervades most of the decrees of the Synod of Elvira and some few decrees of Arles and Ancyra represent the discipline of the Church at that period. Canon 13 was designed to put an end to the rigorism that existed in certain localities, as something that the Church could not sanction. The commission of Christ to the Apostles was a twofold one. It included the commission to loose and the commission to bind; the commission to remit and the commission to retain. Nowhere in the words of Christ is there a suggestion that either part of this commission is more important than the other; and although it is a fact of history that the commission to bind was more in evidence during the earliest centuries, there is also the dogmatic fact that the Church during that period or during any other period could not so far forget the other half of her commission as to refuse in this life reconciliation to a sinner or to a certain class of sinners when these had fulfilled every condition required for reconciliation. Any other position is clearly at variance with the definition of the Council of Trent and touches the inerrancy of the Church.

and by some of the orthodox bishops, though on the two points on which his party cut itself off from the Church, he was immovable. In spite of this mildness, however, the Novatianists showed no disposition for reconciliation, and the sect continued to exist well into the fifth century.[80]

CANON 9

Summary. Those ordained without a previous examination, or who during such an examination confessed their wrongdoing, shall be deposed.

Text. **If some have been raised to the priesthood without an examination, or if in the course of such an examination they confessed their wrongdoing, and in spite of that confession some one felt moved, contrary to the canon, to impose hands upon them, such the canon does not approve, for the Catholic Church demands stainlessness.**

Comment. The transgressions here referred to are all such as exclude a person from the priesthood, namely, idolatry, adultery, homicide, blasphemy, bigamy, heresy, etc. The term priesthood is used here in a wide sense, and includes not only priests in the restricted acceptation of the term, but also bishops; for in both the Church demands unblemished character. The canon to which allusion is made is the ninth of Neocaesarea (315). The council draws attention first to the case of those who have been or in the future may be elevated to the priesthood without that examination required by I Tim. 3:2, and Tit. 1:7. That this rule of Timothy was a fundamental one from the earliest history of the Church, there can be no question. In the choice of ministers, prudence and precaution cannot be dispensed with. We know that, in the selection of bishops, in the East and the West the laity had a voice, to testify as to the character, the fitness or unfitness, of the candidate. That this, at least in the earliest times, applied also to candidates for the priesthood, goes almost without saying. Tertullian testified to this practice when he declared: "Tried men and elders preside over us, obtaining that honor not by purchase, but by estab-

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This question is too big and too complex to be presented even in outline in a note. Those who have a desire to go into it more deeply are referred to the following works. For the attitude of extreme rigorism: Funk, "Zur altchristl. Bussdisciplin," in *Kirchengeschl. Abhandl.* I, 155–81; Batiffol, *Études d'histoire et de théologie positive*, 1st series (Paris, 1907), pp. 69–144; Rauschen, *Eucharistie u. Busssakrament in d. ersten 6. Jahrh.*, Freiburg, 1910. For a milder attitude: Stufler, in *Zeitschr. f. kath. Theologie*, 1907–1909; Esser, in *Katholik*, 1907, 1908; D'Alès, *L'Edit de Calliste. Étude sur les origines de la pénitence chrétienne*, Paris, 1914; Hefele-Leclercq, I, 576–87; Watkins, *A History of Penance*, 2 vols., London, 1920; Haslehurst, *Penitential Discipline in the Early Church*, London, 1921.

[80] Bright, *Canons of the First Four General Councils* (Oxford, 1892), pp. 29–38; Hefele-Leclercq, I, 165–72.

lished character (*testimonio*)."[81] So universally were this rule and its excellent results known, not only in ecclesiastical but in civil circles as well, that the Roman Emperor Alexander Severus (d. 235) recommended its adoption by publishing the names of men selected for high public offices and then asking the people, if they had knowledge of a crime or crimes committed by these men, to make them known.[82] St. Cyprian, before holding an ordination or consecration,[83] was accustomed to consult the clergy and laity as to the worthiness of a candidate. He maintained that candidates for God's priesthood should be chosen with full diligence and sincere investigation (*plena diligentia et exploratione sincera*).[84] The Synod of Elvira in canon 24 decreed that no one was to be admitted into the ranks of the clergy outside of the province in which he had been baptized, because the life of such a one could be but little known.[85] The Synod of Sardica (343–44), presided over by Hosius of Cordova, in canon 10 enacted that promotion to the episcopate must be a gradual one; that the candidate must first have fulfilled the ministry of reader, deacon, and priest, and each of these for no brief time, so that it may be known whether or not he is competent and worthy of the episcopate.[86] St. John Chrysostom, speaking of the priesthood, says that he who is about to ordain must first institute a diligent inquiry, but much more so must he who is to be ordained.[87] St. Basil reproved his chorepiscopi for failing to make due inquiry before admitting persons to minor orders.[88]

In the second place the council draws attention to the case of candidates who during an examination confess wrongdoings that disqualify them for sacerdotal promotion, but are ordained by bishops moved thereto by unworthy motives. Disregard for this ancient rule existed particularly among the Arianizing bishops, though no doubt instances of its violation were found also in the ranks of the orthodox. In conclusion the council declared that persons so promoted, the canon does not approve, that is, they are to be deposed when it is discovered that they have been promoted in violation of the rule. It is clear that the penalty applies properly to the second case, it is rather severe on those of the first who after ordination prove to be exemplary priests or bishops.

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[81] *Apologeticus*, 39.
[82] Lampridius, *Vita Alexandri*, 45, in *Script. Hist. Aug.*
[83] *Epist.* XXXVIII, 1.
[84] *Epist.* LXVII, 2.
[85] C. 4, D. XCVIII.
[86] Hefele-Leclercq, I, 790.
[87] "Oportet eum qui ordinaturus est, multa prius perquisitione uti; sed multo majore eum qui ordinandus est." *De sacerdotio*, IV, 2.
[88] *Epist.* LIV.

CANON 10

Summary. Those who lapsed are to be deposed, whether those who ordained them were aware of their guilt or not.

Text. The *lapsi* who have been ordained either through the ignorance or in spite of the knowledge of those who ordained them, are no exception to the law of the Church, and they will be excluded as soon as their irregularity becomes known.

Comment. This canon deals with those who apostatized in time of persecution. In the matter of their ordination the council makes no innovation, but merely gives ecumenical expression to a practice that went back to St. Cyprian and was endorsed by the bishops of Africa in his time, namely, that "such persons might indeed be admitted to penance, but should forever be debarred from all orders of the clergy and from all sacerdotal honors." [89] No lapsed persons, therefore, were to be promoted to clerical orders. What penalty, if any, was to be imposed upon the bishop who in spite of his knowledge of the unworthiness of a candidate promoted him to orders, the canon does not say. Because of the lack of earlier legislation on the point, it is probable that the council did not seriously consider that matter.

CANON 11

Summary. Those who apostatized without compulsion, though they are undeserving of indulgence, shall do penance for twelve years.

Text. With regard to those who during the tyranny of Licinius apostatized without compulsion or confiscation of property or peril or any other pressure, the council has decided to treat them with kindness, though they have shown themselves unworthy of it. Those, therefore, who are truly repentant and were believers before their fall, shall do three years of penance among the *audientes* and seven years among the *substrati;* for two years more they shall take part with the people in the prayers, but without offering sacrifice themselves.

Comment. This canon with the three following canons constitutes a small penitential code. The defeat of Licinius shortly before the assembling of the Nicene Council brought the persecution inaugurated by that tyrant to an end. Owing to the severity with which it was prosecuted, many Christians apostatized, so that the council found it necessary to formulate

[89] *Epist.* LXVII, 6.

a few disciplinary rules in regard to them. Needless to say, as in former persecutions, by far the majority of those who reverted to paganism did not do so from conviction. They simply had not the courage to remain steadfast in the face of temporal losses, torture or death, and by an external act of apostasy sought to preserve their property, liberty, and life. Among those who apostatized there did not exist an equal degree of guilt. Some lapsed without compulsion or pressure of any kind; others, arrested, gave way under threats of severe punishment; while others subscribed to pagan practices only after undergoing excruciating torture.

To make the penance imposed proportionate to the guilt of the penitent, there existed in the East during the last half of the third century and during the fourth century a gradation or system of penitential stations, and the penitents were grouped in as many different classes. At the time of the council there were three such classes.[90] The first was known as the *audientes* ("hearers"). Members of this class were stationed in the narthex or vestibule of the church and were permitted to remain during the *missa catechumenorum* only, that is, till the end of the sermon. Next came the *substrati* or *genuflectentes* ("kneelers"). These took their place in the nave of the church, that is, between the door and the ambo, which in those days was a bare space without seat, desk, or kneeler. They were on their knees when not prostrated on the floor, and did not stand as did the faithful during divine service. They too were dismissed with the catechumens. The last class was that of the *consistentes* ("standers"). The penitent now stood with the people. He was permitted to remain during the *missa fidelium* and was debarred from nothing except the reception of the Eucharist. Having fulfilled his period of penance in this last class, he left the ranks of the penitents and was admitted to the community of the faithful.[91]

In this canon the council considers the case of the most guilty ones only, those who had the least excuse for apostatizing, and decides that before they are received back into the Church, they must do penance for three years among the *audientes*, seven years among the *substrati*, and two

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[90] A fourth station or class was added later. St. Basil (*epistolae* can. II, 22 and III, 56) is the first to make mention of it. It was the first or lowest station. Penitents of this class were known as *flentes* or *lugentes* (mourners). They were forbidden to enter the church, but stood outside the church door beseeching the faithful as they entered to pray for them. In the West, where the penitents were treated much like the catechumens, the classification did not exist; at least the groups or stations were not so clearly marked. At a later period, however, at the beginning of the Middle Ages, and after they had disappeared in the East, we find penitential stations or classes also in the West. Funk, *Kirchengeschichl. Abhandl.*, I, 195 ff.

[91] Funk, "Die Bussstationen im christl. Altertum," in *Kirchengeschl. Abhandl.* I, 182–209; *idem*, "Die Katechumenatsklassen des christl. Altertums," *ibid.*, I, 209–41; Schwartz, *Bussstufen u. Katechumenatsklassen*, Strassburg, 1911; Watkins, *op. cit.*, I, 239–92.

years among the *consistentes*. The nature of the penance to be imposed on those guilty in a lesser degree, the canon does not specify. In this canon the council concerns itself with those who before their fall were members of the Church. The punishment that was to be imposed on catechumens who showed themselves weak during the persecution, was specified in canon 14.

CANON 12

Summary. Those who, called by grace, showed their zeal and laid aside the military uniform, but have returned or brought about their return to military service, are to do penance for a period of thirteen years; which period may be reduced by the bishop in the case of those who manifest a willing and ready compliance.

Text. **Those who, called by grace, showed their first zeal and laid aside the girdles (ζώνας, *cingula militiae*), but afterward returned like dogs to their vomit, so much so that some have even given money and presents in order to be readmitted to military service, are to remain for three years among the *audientes* and for ten years among the *substrati*. Their disposition and the character of their repentance are to be closely observed. Those who give evidence by fear and tears, patience and good works, not of a simulated repentance, but of the reality of their conversion, may, after the fulfilment of their time among the *audientes*, in justice participate in the prayers (*consistentes*), in which case it is left to the discretion of the bishop to adopt even more lenient measures toward them. Those, however, who manifest indifference (in the performance of their penance) and consider the mere entrance into the church an adequate expression of contrition, must fulfil the term prescribed.**

Comment. In his last struggles with Constantine, Licinius posed as the champion of paganism, so that in the ultimate analysis it was simply a question whether Christianity or paganism should triumph. Every Christian, therefore, who in this conflict had by enlistment in the army of Licinius supported the cause of paganism, was looked upon as a *lapsus*, even though he did not formally apostatize. This was true especially of those who, moved by their conscience, had once withdrawn from military service in the army of Licinius but afterwards re-entered it, probably because of the advantages it offered in certain respects, going even so far as to give money and presents to those in authority as an inducement to be taken back. Licinius, moreover, demanded of his soldiers an unconditional renunciation of Christianity to be manifested by taking part in pagan sacrifices, and excluded from his army all who would not perform acts of heathen worship.

In this canon those only are dealt with who re-entered the military

service under Licinius and thus gave support to the cause of paganism. These are to spend three years among the *audientes* and ten years among the *substrati*. In the case of those who gave proof of a genuine and sincere repentance, it was left to the discretion of the bishop to transfer them, on the completion of their first three years of penance, from the first to the third class (*consistentes*), in which they would be permitted to assist at the entire service. The length of time to be spent in the latter class is not stated; probably it was two years, as was laid down for those in canon 11.

CANON 13

Summary. The dying are to be given Viaticum. But if anyone should recover, he must be placed in the number of those who take part in the prayers, and with these only.

***Text*. With regard to those dying, the ancient canonical law shall continue to be observed, namely, if anyone be near death let him not be deprived of the last and most necessary Viaticum. But if he recovers after having been absolved and admitted to communion, he is to be placed among those who are permitted to take part in the prayers only (*consistentes*). In general, and in the case of anyone dying who wishes to receive the Eucharist, let the bishop give it to him after due investigation.**

Comment. In this canon the council makes provision for those *lapsi* who are in danger of death before the expiration of their term of penance. In case of recovery, after having been reconciled, they are to take their place in the third class of penitents. How long they are to remain in that class is not specified, probably two years, if we follow the prescription of canon 11. In the concluding portion of the canon, the council makes its statement more general. Not only the *lapsi*, but all those excommunicated for any crime whatsoever may receive holy communion *in extremis* after due investigation by the bishop.

Occasion for this canon was given by contrary practices in certain localities. In Carthage St. Cyprian decided that those *lapsi* who deferred repentance until they were in the fear of death, must be refused communion in the hour of death, because it is not repentance for sin, but the fear of approaching death that moves them to ask for it.[92] The Synod of Elvira designated nineteen cases in which it decreed: *nec in finem habere communionem*. The Synod of Arles in canon 14 enacted that those who falsely accuse their brethren *usque ad exitum non communicare*; and in canon 22 it ordained that apostates are not to communicate unless they recover and show real repentance. Somewhat more indulgent was the Synod of Ancyra

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[92] *Epist*. LV, 23.

when in canon 16 it decreed that married men over fifty years of age convicted of immoral practices with beasts, are to be admitted to holy communion only in the hour of death.[93] In reply to an inquiry by Exsuperius bishop of Toulouse, as to what was to be done with those who after a lifetime of licentious indulgence asked at the approach of death for reconciliation and communion, Pope Innocent I in 405 explained that formerly the discipline regarding such persons was more rigorous; later, however, it had become more lenient. Formerly such persons were indeed granted penance, but communion was denied them; since the end of the persecutions, however, a milder discipline in regard to them was deemed proper, and it has been the practice to admit them to communion also.[94] Pope Celestine I, in his letter to the bishops of the provinces of Vienne and Narbonne (428), expressed his horror at learning that penance (that is, absolution) was refused the dying and that the desire of those who in the hour of death sought this remedy for their souls, was not granted. We shudder at the thought, he wrote, that anyone can be so irreligious as to doubt the mercy of God; as if it were impossible for God to give aid to one who at any time has recourse to Him.[95] Leo the Great, in his letter (452) to Theodore bishop of Fréjus, wrote: "To those who in time of need and imminent danger implore the aid of penance and then of reconciliation, satisfaction is not to be forbidden nor is reconciliation to be denied." [96]

The council calls the Eucharist the holy and most necessary Viaticum. The word ἐφόδιον, used in the text, is equivalent to the Latin *viaticum*, which means supplies for a journey, money, provisions, etc. Later it meant, figuratively, the provision for the journey of life, and then by metaphor the provision for the passage from this world into the next. This last is its meaning in sacred liturgy. In the early Church the expression ἐφόδιον was variously applied. Phileas bishop of Thmuis (d. 304), in a letter to his flock which has been preserved by Eusebius, applied it to means of salvation in general: *Qui (scil. martyres) nossent Dominum nostrum Jesum Christum nostra causa hominem idcirco factum esse, ut et peccatum omnino exscinderet et ad vitam aeternam contendentibus nobis subsidia* (ἐφόδια) *itineris compararet.*[97] Similarly St. Basil, . . . *non negligamus ad eam demigrationem parare viaticum* (ἐφόδιον).[98] Basil applied it also to

[93] In these and similar cases it must be borne in mind that it was communion only that was denied to such sinners, not reconciliation or sacramental absolution. Frank, *Die Bussdisciplin der Kirche* (Mainz, 1867), pp. 887–93.
[94] *Epist.* VI, 2.
[95] Mansi, IV, 465.
[96] *Epist.* CVIII, 4.
[97] *Hist. eccl.*, VIII, 10.
[98] *De Spiritu Sancto*, no. 66.

good counsel and prayer.[99] Then again, its application was extended to the sacraments in particular. St. Basil applied it to baptism: *Juvenis es? retine juventutem baptismatis freno. Transiit flos aetatis? cave feceris viatici jacturam.*[100] And Gregory of Nazianzus used the verb ἐφοδιάζω (*viaticum dare*) for the administration of baptism to a dying person.[101] In the course of time, the term *viaticum* became limited in its application to the Eucharist only, but finally acquired the exclusive and technical sense which it has today, the communion given to those who are in danger of death.

CANON 14

Summary. Catechumens who have fallen shall be for three years with the hearers.

Text. Regarding the catechumens who have lapsed, this holy and great council decrees that they shall be for three years hearers (*audientes*) only, after that they may join in the prayers (*consistentes*) with the catechumens.

Comment. This canon concludes the Nicene penitential code. It is uncertain whether there is question here of catechumens who apostatized during persecution, or of such as were guilty of other grievous offenses, as sins of the flesh. The latter opinion seems to be the more common one.

CANON 15

Summary. No bishop, priest, or deacon shall pass from one Church to another. Should they attempt to do so, they shall be sent back to the Churches for which they were ordained.

Text. On account of the many disorders and divisions, it was thought well to abolish everywhere the custom which has been established in some localities contrary to the canon; namely, that no bishop, priest, or deacon is to pass from one city to another. Should, however, anyone dare to act contrary to this decision of the holy and great council and follow the old custom, his action shall be regarded as absolutely null, and he is to return to the Church for which he was ordained bishop or priest.

Comment. It is difficult to say to what canon the council here alludes, if indeed the allusion is to any canon properly so called. It is not improbable that the rule invoked had its basis in a custom that went back to

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99 *Epp.* LVII and CLXXIV.
100 *Hom.* XIII, 5.
101 *Hom.* XL, 11.

Apostolic times; the underlying idea being the conviction of the early Church that a spiritual alliance or a sort of mystical marriage exists between the bishop, priest, and deacon on the one hand and the Churches for which they were ordained on the other. The conjugal bond being indissoluble, it naturally follows that the alliance between a bishop and his Church partakes of the same nature, and he who for the sake of wealth and things earthly left his own Church for another was regarded as an adulterer. This idea was expressed by St. Jerome when, referring to this canon, he wrote: "No bishop should pass from one Church to another, lest scorning the society of a poor yet virgin see he should seek the embraces of a wealthy and adulterous one." [102]

What the council aimed at, of course, was translation associated with worldly motives, resulting often in scandalous discord and strife. "It is evident that the sunshine of the new Constantinian era had produced a crop of secularity within the Church. Many of its ministers had become 'conformed to this world'; the sees in great towns had become lures to ecclesiastical ambition; a restless and self-seeking temper had impelled bishops and even priests, conscious of popular talents and eager for a wider sphere of influence—in the interests, as they would say, of the faith and of the Church—to make themselves centers of partisan activity. Episcopal vacancies were too often occasions for cabal in favor of this or that prelate who would regard translation as promotion." [103] Thus did Eusebius, the champion of Arius' cause, who had been bishop of Berytus, from ambitious motives transfer himself to the see of Nicomedia. There were others who had done the same thing or had themselves transferred.[104] In 314 the Synod of Arles in canon 2 ruled: *Ubi quisque ordinatur, ibi permaneat*, and a comparison of that synod's canon 21 with the present one shows that the evil had spread widely and rapidly. The Synod of Sardica (343–44), dealing with the same subject in canon 1, remarked sarcastically, that no bishop has yet been found to aim at being transferred from a greater city to a lesser one. This Nicene canon was renewed by the Synod of Antioch (341) in canon 21, in which it was decreed that a bishop may not be translated from one parish to another, either intruding himself of his own suggestion, or under compulsion by the people, or by constraint of the bishops; but he shall remain in the Church for which he was chosen by God from the beginning, and shall not be removed from it, in accordance with a former decree. However, the Church soon found it necessary to make exceptions to the rule, and it was not long before these multiplied to such an extent that Gregory of Nazianzus in 382 spoke of

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[102] *Epist. LXIX, 5, ad Oceanum.*
[103] Bright, *Canons of the First Four General Councils*, pp. 55 f.
[104] Socrates, VII, 36.

the prohibition as no longer existent. In the Western Church it was more strictly observed.[105]

CANON 16

Summary. Priests, deacons, and other clerics who desert their own Church are not to be admitted into another, but are to be returned. Should any bishop ordain one belonging to another bishop without the consent of that bishop, such an ordination shall be regarded as null.

Text. Priests, deacons, or any other clerics who, not having before their eyes the fear of God, nor considering the ecclesiastical law, through a want of earnestness abandon their Church, shall under no condition be received into another Church, but are to be urged by every means to return to their own diocese; in case they refuse, they are to be excommunicated (deposed). Should anyone, however, attempt to steal a subject, as it were, who belongs to another (bishop), and, without the consent of the bishop from whom the cleric escaped, ordain him for his own Church, such an ordination shall be invalid.

Comment. This canon bears a marked resemblance to the foregoing one and to canon 21 of the Synod of Arles. It consists of two main points: (a) it threatens to exclude from participation in the regular offices of clerics all those priests, deacons, and other clerics who refuse to return to their own Church, and (b) it forbids bishops to ordain anyone who belongs to another bishop or to another diocese; and, should such an ordination take place, it shall be considered invalid. Whether the council even remotely had in mind here the Meletian Schism, is uncertain; it seems at least very doubtful. Meletius did not ordain outsiders for his own diocese, but contrariwise, ordained clerics for other dioceses. This canon aims primarily at such cases as that of Origen, who was ordained by the bishops of Caesarea and Jerusalem without the consent of Demetrius of Alexandria, whose subject he was. In declaring such ordinations invalid, it is doubtful whether the council intended a complete invalidity or only a *suspensio ab officio*. What it had in mind is now impossible to state with certainty. This much is beyond question, that the terminology of the early centuries lacked exactness and precision. On many points thought was still immature, almost crude, and this fact naturally produced the inadequacy of expression that we find in so many disciplinary decrees of the early councils.[106]

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[105] Thomassin, *Vetus et nova ecclesiae disciplina* II, lib. II, cc. 60, 61.

[106] In the course of the early history of the Church, in fact, well into the Middle Ages, we meet frequently with statements by councils and popes declaring invalid

CANON 17

Summary. Clerics are forbidden to take interest or devise other schemes of dishonest profit, under penalty of deposition.

Text. Since many clerics, led by avarice and a spirit of usury, have forgotten the divine word: "he hath not put his money to usury,"[107] and demand as veritable usurers a rate of one per cent

under certain circumstances an ordination or ordinations for other reasons than defect of the prescribed form or intention. For instance, ordinations were declared null and void when administered by heretical, schismatical, simoniacal, or excommunicated bishops, or for other reasons, as is indicated by this and subsequent canons. In many of such cases the sacrament was repeated unconditionally. Such declarations and practices are apparently in direct contradiction to the later teaching of the Church, which specifies as the sole causes of invalidity of the sacrament of holy orders defect of the prescribed form or intention. In other words, outside of these defects the sacrament is administered validly, though illicitly, by any heretical and excommunicated bishop who has been validly consecrated, or by any bishop in good standing and acting under prohibited conditions, as is the case in our canon. The point involved, then, is not one of discipline, but of dogma. The problem is one of the most complex in the history of theology. Peter Lombard called it an "insoluble one." For our purpose it suffices to indicate: (a) In the early Church there was no clear cut distinction between invalid and illicit ordination or consecration. An illicit ordination was simply designated as ἄκυρος, "invalid," and to all practical purposes it was equal to invalidity, for to one illicitly ordained a dispensation was very rarely granted, and where there was no dispensation it made little difference, so far as the exercise of the office was concerned, whether such an ordination or consecration was termed invalid or illicit. The Council of Chalcedon (canon 6) declared absolute ordinations, that is, ordinations without a title, invalid. Anyone so ordained was regarded as having received the sacrament to no purpose, hence was looked upon as really not a bishop or priest at all; not that he lacked the sacred character of the sacrament, but, lacking the title, he could not realize the exercise of that definite office for which alone the sacrament was conferred.
(b) In those days no clear distinction existed between *ordo* and *jurisdictio*. As a rule it is the *potestas sacerdotalis* or *episcopalis* that is spoken of. Anyone therefore who did not possess episcopal jurisdiction (as the intruder), or who had canonically lost it (as one deposed), was simply looked upon as not a bishop or as no longer a bishop.
(c) Sometimes it is clear from the context that the expression *ordinatio irrita* does not mean invalid as we understand that term today, but uncanonical, illicit, not possessing the exercise of the office conferred; or invalid *quoad executionem, gradum et honorem*, valid *quoad characterem*.
(d) When the popes and councils speak of heretical and other ordinations as *irritae*, they probably mean in most instances that they were illicit because they had been conferred and received in a state of mortal sin and conferred moreover by men possessing no ecclesiastical jurisdiction. In such cases the sacramental character was certainly imparted but, *propter obicem peccati*, grace was withheld.
(e) Finally, it must be borne in mind that these reordinations were often the work of malicious, vindictive, ignorant, and jealous bishops. Saltet, *Les réordinations, étude sur le sacrament de l'ordre*, Paris, 1907, and the review of this work in *Zeitschr. f. kath. Theologie,* XXXI (1907), 507–15; Hergenröther, *Photius, Patriarch v. Constantinopel,* II (Regensburg, 1867–69), 321–76; *idem,* "Die Reordinationen d. alten Kirche," in *Oesterreich. Vierteljahrsschrift f. kath. Theologie* (1862), pp. 207–52, 387–456; Morin, *Commentarius de sacris ecclesiae ordinationibus,* Paris, 1655; Wordsworth, *Ordination Problems,* London, 1909.

[107] Ps. 14:5.

interest per month, this holy and great council decides that if anyone after the publication of this ordinance takes interest in any way, or engages in the business of usury in any manner, or demands back one and a half times as much, or otherwise devises a scheme of dishonest profit, he shall be ejected from the clerical state and his name stricken from the register.

Comment. In the early Church the taking of interest was synonymous with usury and condemned as contrary to the disinterested benevolence which was expected to actuate a Christian in dealings with his neighbor. To exact interest from a poor and needy man was looked upon as out of harmony with the dictates of mercy and humanity. Among the Romans twelve per cent, that is, one per cent a month, was about the lowest rate demanded. This was also the legal rate until Justinian reduced it by half. At times, however, that rate was doubled and tripled, and even rose as high as forty-eight per cent. As long as the spirit of genuine brotherly love and self-abnegation prevailed among Christians, there was little likelihood that they would adopt the usurious practices of the heathens. This happy state, however, did not continue. During the long peace which the Church enjoyed immediately before the Decian persecution, many Christians became infected with a worldly spirit, and an appalling amount of laxity and corruption set in. The heathen practice of taking interest had found its way especially among the bishops, in whom such action was the more reprehensible since according to the rule their savings were to go to the Church to be distributed among the poor and not to be used to exploit their misfortune. While the persecution was a severe one, its duration was comparatively brief, too brief to permit the Christians to forget or easily abandon the practice. Usury had already been condemned in canon 20 of the Synod of Elvira and in canon 12 of that of Arles. In these three canons the prohibition affects clerics only, not the laity. It is true, the canon of Elvira ruled that the punishment be inflicted also on laymen who, contrary to its decision, persisted in usurious practices, but the authenticity of this portion of the canon is very doubtful, and it may be said that till the ninth century such practice was forbidden only to clerics. Pope Leo I declared the practice on the part of laymen reprehensible.[108]

CANON 18

Summary. Deacons are forbidden to distribute the Eucharist to the priests and to receive it themselves before the bishops. They are also forbidden to sit between the priests.

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[108] *Epist.* IV, 3 (c.8, C.XIV, q.4). Schaub, *Der Kampf gegen d. Zinswucher* (Freiburg, 1905), 26 ff.

Text. It has become known to this holy and great council that in some localities and cities the deacons distribute the Eucharist to the priests, though it is contrary to the canon and to custom that they who may not themselves offer the sacrifice, should distribute the body of Christ to those who offer the sacrifice. It has also become known that some deacons receive the Eucharist before the bishops. All that shall be discontinued now and the deacons shall remain in their place, knowing that they are servants of the bishop and in rank subordinate to the priests. They are to receive the Eucharist in accordance with their rank, after the priests, a bishop or priest administering it to them. The deacons also are not to sit between the priests; this is contrary to rule and order. If anyone, after these ordinances, still refuses to obey, he is to be suspended from the deaconship.

Comment. In the ancient Church the holy sacrifice was offered up by one only, ordinarily by the bishop, or if he was for any reason impeded, by a priest. The priests assisted as *consacrificantes,* that is, in the same manner as the newly ordained priest today at his ordination repeats the mass with the consecrating bishop. In the early Church this rite was of daily occurrence.[109] These *sacerdotes consacrificantes* were supposed to receive communion from the hands of the celebrant. Earlier the custom prevailed that the deacons administered communion under both forms to the laity who were present and then took it to those who were absent on account of illness, imprisonment, or other reasons that prevented their being present.[110] Later the practice was so changed that the consecrated bread was administered by the celebrating bishop or priest, and the chalice only by the deacon.[111] In some localities, however, the deacons, not content with distributing it to the laity, arrogated to themselves the right to distribute it also to the *sacerdotes consacrificantes.* It is this abuse that the council condemned.

Another abuse charged against some deacons was that they received the Eucharist before the bishops. This part of the canon is far from clear and has been the subject of not a little discussion by commentators. It speaks only of "some deacons," from which the conclusion is evident that it was

[109] Morin, *Comm. de sacris eccl. ordinat., III, Exercit. 8, de episcopis et presbyteris multis simul sacrificantibus.*

[110] St. Justin, *Apologia* I, 65, 67; Morin, *op. cit.,* III, *Exercit.* 9, c. 3. Cf. also the rubric in St. James's Liturgy, Brightman, *Liturgies Eastern and Western* (Oxford, 1896), 64, 5. In passing it may be noted that in the early centuries the one communicating received the consecrated bread not in his mouth, but it was laid in his hand and he himself would place it in his mouth. Cyril of Jerusalem (d. *ca.* 385) about twenty-five years after this council instructed his catechumens, when they made their first communion, to receive the body of Christ in the palm of the right hand. *Catechesis,* XXIII, 21.

[111] St. Cyprian, *De lapsis,* 25.

not a general practice. Two questions arise: first, who were these deacons? and secondly, how did they or how could they receive the Eucharist before the bishop? As to the first, Hefele maintained that they were deacons of ordinary rank, who, puffed up with pride, permitted their presumption to carry them to excess in this matter.[112] But it is difficult to understand how an ordinary deacon, though filled with pride, could so overstep his bounds without being put in his place by the bishops, especially by those, and there were many, who were jealous of their episcopal rank and demanded recognition of their proper place in liturgical functions. A more plausible explanation is that given by Dr. Leder, who sees in the expression "some deacons," not the ordinary deacons, but the *diaconi episcoporum*, later known as archdeacons.[113] The *diaconus episcopi*, or episcopal deacon, was chosen by the bishop from the diaconal college for his own personal service. The one so appointed, though still a deacon, naturally acquired a position that placed him outside and above the rank of the ordinary deacon. He assisted in the work of ecclesiastical administration, had charge of the distribution of alms to the poor, and was entrusted with the surveillance of the other deacons and of the subordinate clergy. From the fourth century onward he was the official supervisor of the subordinate clergy and exercised a disciplinary authority over them. In the earlier stages of the office, his duties lacked juridical definition, but with the beginning of that century they gradually assumed the character of a juridical ecclesiastical office. The Apostolic Constitutions (of post-Nicene origin) say that he should be the bishop's ear, eye, mouth, heart, and soul, so that the bishop may not be distracted with many cares, but only with such as are more important.[114] The episcopal deacon was to be ready at once and at all times to do the bishop's bidding, keep him informed, and act as a medium of communication with the laity and with the outside world.[115]

With regard to the second question, it may be observed that after those in authority, the bishop's deacon held in the episcopal church the first place in the congregation; and it would not be a matter for surprise if as such he made bold to receive the Eucharist before a visiting bishop or bishops who happened to be present at the divine service. If he received it before the bishop, then he received it also before the priests. The council therefore reminds him that in rank he is subordinate to the priests, and is to receive it in accordance with his rank, after the priests. Because of

[112] *Hist. des Conciles*, I, 613 f.

[113] *Diakonen d. Bischöfe u. Presbyter u. ihre urchristl. Vorläufer* (Stuttgart, 1905), 286 ff.

[114] *Lib. II*, 44; cf. also 30, 31. Thomassin, *op. cit.*, I, lib. II, cc. 17–20.

[115] Cf., for example, Athanasius, *Apologia de fuga sua*, 24; *idem, Apologia contra Arianos*, 67; Synod of Sardica, cc. 8 and 9.

their position and the fact that *ubique locorum summa pollebant gratia apud episcopos*, these episcopal deacons came to regard themselves at times, at least in some respects, as more important than the priests and superior to them.

A third encroachment of the deacons on the rights of others was that, instead of taking their proper place in the church during the time of divine service immediately below the priests, they sat between or among them. The canon ends with a threat: should any deacon after the publication of these rules refuse to obey, he is to cease from ministering as a deacon.

Unfortunately the terms of this decree were not always strictly observed or enforced, and so we find after as before the council the arrogance and pride of the deacons a subject of frequent complaint. Often they were held in higher esteem than the priests. One reason for this is given by St. Jerome: "The rarer anything is the more it is sought after. In India pennyroyal is more costly than pepper. Their fewness makes deacons persons of consequence, while priests are less thought of because of their great numbers." [116] In 314 the Synod of Arles in canon 15 reproved certain deacons for presuming to offer the holy sacrifice when in consequence of persecution no bishop or priest was at hand. In canon 18 the same synod reminded deacons of their subordination to the priests; and the Synod of Laodicea (343–81) in canon 20 forbade deacons to sit down in the presence of a priest, whether in or out of the church, unless invited by him to do so. St. Jerome speaks of having seen in Rome at a social gathering of clergy and laity a deacon give the blessing at table in the presence of the priests.[117]

This disciplinary canon, as Van Espen rightly remarked, proves the belief of the council in three great dogmatic truths: (1) it saw in the Eucharist the body of Christ; (2) it called the Eucharistic service a sacrifice; and (3) it conceded to the priesthood alone the power of consecration.[118]

CANON 19

Summary. Paulianists who return to the Church must be rebaptized. If any have been clerics in their own sect and are of unblemished character, these may be ordained after such baptism, otherwise they are to be rejected. The same holds good of their deaconesses.

Text. **Regarding the Paulianists who wish to return to the Catholic Church, the rule is to be observed that they must be rebaptized. If any of them have formerly (as Paulianists) been members of the clergy, these, if they are found to be of unblemished character and**

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[116] *Epist. CXLVI, 2 ad Evangelum.*
[117] *Ibid.* Cf. also *idem, Comment. in Ezech.*, 48.
[118] *Op. cit.*, III, 95.

without censure, may be ordained by the bishop of the Catholic Church after they have been rebaptized. Should they be found unfit after an examination, they must be rejected. The same holds good in the case of their deaconesses, and, in general, this rule is to be observed in regard to all who have been enrolled among their clergy. We have mentioned the deaconesses who are found in this state, that, since they have not been ordained, they are to be counted among the laity.

Comment. Whether the rule mentioned in this canon was a new decision of the Nicene Council, or merely the renewal of an earlier and local one, probably of Antioch, that has not come down to us, is uncertain. The Paulianists were the followers of Paul of Samosata bishop of Antioch, who in 268 was deposed by a synod held in that city for his Trinitarian and Christological heresies. The council declared the baptism conferred by them to be invalid on the ground that they used a defective formula or used the orthodox formula in an unorthodox sense. According to them—and this was the teaching of the founder of the sect—the Father, Son, and Holy Ghost are but one Person. The Logos or Son is without hypostasis, being merely the wisdom of God, which is in Him as reason is in a man. He was born as Son before all ages; is without shape and invisible to men. Christ is essentially a man, but inspired by the Holy Ghost from above. The Father and Son are one God, while Christ is from the earth with a personality of His own. There are two persons in Christ. The Logos as wisdom dwelt in the man Jesus as we live in houses, inspiring and teaching Him and united with Him not substantially, but qualitatively. Mary brought forth a man like us, not the Word, for she did not exist before the worlds. St. Athanasius, who undoubtedly was well informed, tells us that in administering baptism they indeed named the Father, Son, and Holy Ghost, but adds that the grossness of their errors deprived the formula of all orthodox significance.[119] Pope Innocent I wrote, "they do not baptize in the name of the Father, Son, and Holy Ghost," [120] meaning that they use these names in a wrong sense. Since their baptism was invalid, it follows that their orders also were invalid.[121]

The remainder of the canon offers much difficulty. As Dr. Bright has rightly stated, "The difficulties which this canon has presented are chiefly due to its lax and, as it were, colloquial wording. It reads somewhat like the first draft of a resolution struck off in debate, and not yet elaborated

[119] *Oratio II adv. Arianos*, 43.

[120] C.53, C.I, q. 1.

[121] For a scholarly commentary on the first part of this canon, cf. Loofs, *Paulus v. Samosata* (Leipzig, 1924), pp. 164–201. Also Bardy, *Paul de Samosate* (Louvain, 1923), pp. 411–33; Reville, *La Christologie de Paul de Samosate*, Paris, 1896; Bardenhewer, *Gesch. d. altkirchl. Literatur*, II, 275–79.

into form." It is important to bear in mind that the canon deals with the Paulianist deaconesses only and with no others. "The same holds good in the case of their deaconesses, etc." This sentence stands apparently in direct contradiction to the one that follows: "We have mentioned the deaconesses, etc." In the former the council counts the Paulianist deaconesses among the clergy and decrees that after having been baptized and if found worthy, they are to be ordained again. In the latter we are told that they have not received ordination and are to be counted among the laity. Hefele's solution of the difficulty that, in the first sentence, instead of "their deaconesses" we ought to read "their deacons" (which is the reading of Gelasius, Atticus, the "Prisca," Gratian, and some other versions), is no solution at all; it merely transfers the difficulty to the last sentence, which without the feminine, "their deaconesses," in the preceding sentence would be unintelligible.[122] Other commentators distinguish between the deaconesses of the two sentences. The former, they say, were women who had been ordained by the Paulianists, while the latter were in a state of probation preparatory to ordination, novices. According to them, the Greek particle ἐπεὶ is to be translated not in a causal sense (as we have done), but in a temporal one; so that the meaning of the last sentence would be: We have mentioned the deaconesses who are found in this state, that *when* they have not received ordination, they are to remain laics.[123] This interpretation is a purely arbitrary one; so much so that it has nothing in its favor. There is no evidence whatever in early ecclesiastical literature to support such a distinction. Besides, it does not explain the phrase ἐν τῷ σχήματι, "in this state." By Latin translators it has been variously rendered, as *in hoc ordine, in eodem habitu, in habitu, in eadem specie.* Those are also the renderings given of the same phrase in canon 8, where it is question of the Novatianist clergy. In our case it can refer only to the phrase ἐν τῷ κανόνι (clerical register or clerical staff) of the preceding sentence.

On two points this portion of the canon seems clear. First, it does not forbid the ordination of women to the rank of deaconess, as some writers would have us believe; and secondly, it does not suppose or imply the existence of the practice of such ordination in the Church at that time. There can be no doubt as to the first point. A merely cursory perusal makes it clear that the canon contains no prohibition against the elevation of women to the rank of deaconess, whether they be Paulianist women or others. When we consider the high esteem in which this council and its decrees were held, not only during the fourth century but the following centuries

[122] *Op. cit.,* I, 616.
[123] Ludwig, *Weibliche Kleriker in d. altchristl. u. frühmittelalterl. Kirche* (München, 1910), p. 12.

as well, it is not conceivable that the great SS. Basil, Gregory of Nyssa, John Chrysosyom, and others would have permitted their sisters and friends to be ordained deaconesses, had such ordination been in contravention of this decree. Nor, for the same reason, would the Council of Chalcedon in canon 15 and the Trullan Synod in canon 40 have determined the age before which a woman was not to be ordained a deaconess. The same can be said of the Apostolic Constitutions and of the imperial legislation of the fourth and following centuries governing the life, conduct, and ordination of deaconesses.[124]

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[124] There were in the early Church two classes of widows, those who were dependent on the charity of the Church, like the orphans, and those who were selected and set apart from these to serve as *ministrae* in the Church (Rom. 16:1; I Tim. 3:11; 5:9–16). It is with the latter that we are here concerned. Their duties were akin to the non-liturgical functions of the deacon; to assist at the baptism of women, to perform certain temporal offices pertaining to the care of women; that is, to give attention to the sick and poor female members of the Christian community, in times of persecution to perform those charitable offices toward those in prison or otherwise deprived of their freedom, to instruct female catechumens how to answer the questions put to them at baptism, etc. This class was of Apostolic origin and till the end of the third century constituted the *ordo viduarum*. In accordance with the instructions of St. Paul (I Tim. 5:9), twice married widows and those less than threescore years of age, were excluded from this class, a rule, however, that seems to have been not always strictly observed in some localities (Tertullian, *De virg. veland.*, 9). Their position in the Church was an honorable one, as we may conclude from the fact that they were reckoned among the clergy, accepting that term in a broad sense. Thus, Clement of Alexandria (d. *ca.* 215), speaking of "chosen persons" in the congregation, mentioned bishops, priests, deacons, and widows (*Paedag.*, III, 12). No less explicit is Tertullian (*De monog.*, 11; *Ad uxor.*, I, 7). Origen spoke of them as enjoying ecclesiastical honors (*Comm. in Joan.; PG*, XIV, 769). In the enumeration of the orders of clerics, they were placed after the deacon. In the course of the third century, with the gradual development in the East of the minor orders and their finished formation in the first forty years of the fourth century, these widows, because their functions were so largely akin to the non-liturgical functions of the deacon, took precedence over these orders in point of rank, and maintained their traditional place immediately after the deacon. Once these minor orders had been fully formed and definitely determined in point of rank and duty, the *ordo viduarum* became the *ordo diaconissarum*, because these women were the deacon's assistants. This change originated most probably in Syria and from there spread gradually to the other Churches in the East. Recruits were still drawn from the ranks of the widows (*Apost. Const.*, viii, 25) but in some measure also from that of elderly spinsters. It is incorrect then to speak of deaconesses during the first three centuries, and the many century old habit of seeing a deaconess every time we see a *ministra*, has wrought more confusion in the subject of deaconesses in the early Church than all other factors put together. St. Paul speaking of Phebe (Rom. 16:1) uses the word ἡ διάκονος, *ministra*, servant. The term applied no doubt also to other women mentioned and not mentioned in the Pauline epistles. Pliny in his letter to Trajan (lib. X, epist. 96) speaks of *ministrae*. What the precise nature of the services of these women was, we do not know. They were varied and variant, and under the circumstances we may take it that the services of many had no relation at all to the non-liturgical functions of the deacon. The noun διακόνισσα, deaconess, was unknown to the Greek language of the time. It is a purely ecclesiastical term and came into usage only toward the end of the third or the beginning of the fourth century, when the rank and duties of the office, like that of the other minor

Neither can there be any doubt with regard to the second point. It is true, the council deals here only and exclusively with the Paulianist deaconesses, but by implication it throws some light on the general practice of the time. Perhaps the chief reason why the latter part of this canon has been a stumblingblock, is that the historical antecedents of some of the elements involved have not been utilized to throw light on it. During the first two centuries or so, only bishops, priests, and deacons constituted the clergy. The remainder of the church personnel, including the widows, who were usually reckoned among the clergy, belonged to the laity. From the year 200 to about the time of our council, everyone who was in the service of the Church and gained his livelihood in or from the Church, whether ordained or not, was reckoned among the clergy, that is, he was on the clerical staff. Hence we find on that staff during this period not only the clergy properly so called, but also laymen, lectors, exorcists, catechists, that special class of widows which we have been calling deaconesses, notaries, Church advocates, and even *fossores*, grave-diggers, who buried the bodies of the martyrs. With the accession of Constantine the Great a new era was opened to the Church. The large and ever increasing membership required organization on a broader basis than had hitherto been possible, and in this matter the status of her minor servants received due attention. Their offices, duties, and rights were clearly defined and, as the idea obtained that those taking part in the divine service or functions related to the liturgy should be instituted in office with prayer and ceremony, we find the minorites so instituted. The minor servants that come into consideration here are the subdeacon, reader, and exorcist.[125] Whether before 325 these received ordination or some sort of imposition of hands, is impossible to say with certainty. The Synod of Antioch (341) in canon 10 declared that chorepiscopi may ordain readers, subdeacons, and exorcists only.[126] That is obviously a complete enumeration of the

servants, subdeacon, lector and exorcist, became clearly and definitely defined and stabilized.

[125] The Greek word for subdeacon is ὑποδιάκονος. We meet that title for the first time in the East in Eusebius, *De martyribus Palaestinae*, c. 3 (Migne, *PG*, XX, 1469), written about 312.

[126] In contrast to the Roman genius for organization, the East was slow. In the matter f ordaining minor servants, it was seventy-five years behind the West. In 250 Cyprian dained subdeacons and readers (*epp.* XXIX, XXXVIII, XXXIX), and in 251 Pope ›rnelius in a letter to Fabius of Antioch declared that the Roman Church has 46 iests, 7 deacons, 7 subdeacons, 42 acolytes, and 52 exorcists, lectors, and porters (Euse- ›is, *Hist. eccl.*, VI, 43; Denzinger, no. 45). The earliest mention of porter (*ostiarius*) the East is canon 24 of the Synod of Laodicea. The date of this synod is uncertain. It as held after the Synod of Sardica and before the Second General Council, that is, be- ween 343 and 381. Westcott (*Hist. of the Canon of the N. T.*, p. 439), and others give 363 as the date, but their arguments for it are groundless. The office originated in the

ecclesiastical orders below the diaconate. The synod introduced no new practice regarding the ordination itself of those three classes of persons; that practice existed before 341. Between this Synod of Antioch and our council there is an interval of only sixteen years. It is probable that the practice existed in 325 in some localities, for in the early centuries there was in the Eastern Church anything but uniformity in certain practices. If we take for granted the existence of that practice in 325, we have in the Eastern Church, outside of the bishop, five classes of clerics properly so called on the church register: priests, deacons, subdeacons, readers, and exorcists. In addition to these there were on the register also laymen, who at that time had not received an order or blessing of any kind, but some of whom did at a later period. Among these we have first of all the deaconess, for the council itself says that she had not received the laying on of hands. Then we have the *fossores*, whom Emperor Constantius in a decree of 357 characterized as clerics, *clerici qui copiatae appellantur;* and in 361 he spoke of them again as *hi quos copiatas recens usus instituit nuncupari.*[127]

The Paulianist sect originated about the year 270, and we may take it as certain that in their organization the Church personnel consisted of clerics and laymen, just as it did in the Church from which it had severed itself. In that Church deaconesses were laics; in the Paulianist sect their standing was no different. The council, therefore, in this canon insisted first of all on the observance of the rule, that Paulianists who return to the Church must be rebaptized. There was no exception to that rule outside the case of Catholics who had apostatized and gone over to that sect. If any of those who return have been members of their clergy, these, if found worthy, may be ordained by the Catholic bishop after they have been rebaptized; otherwise they are to be rejected. This rule is to be observed also with regard to their deaconesses and all others who are on the clerical register; that is, if any of those laics, including the deaconesses, who are on their clerical staff, return, they must be rebaptized and may then continue in their capacity as deaconess, notary, advocate, etc. What did the council have in mind in the last sentence of the canon? Obviously an abuse that existed not only among the Paulianist deaconesses, but most

West. Among the Romans the better class of people had a doorkeeper, whose duty it was to guard the entrance of the house. When the Christians began to have buildings of their own for church services, they followed the example of the Romans and in the larger cities at least appointed porters to guard the entrance of the church. Their duties were to open and close the doors, to watch over the coming in and the going out of the faithful, to refuse entrance to suspicious persons, and to close the doors after the *missa catechumenorum*. The office of acolyte also was a Western institution, and for nearly the first four centuries was unknown in the East.

[127] The Greek word for grave-digger is κοπιάτης, pl. κοπιάται (*copiatae*). I have taken these citations from Lightfoot, *Apostolic Fathers*, I, Part II, 258.

likely also among the deaconesses of the Church. We know from history the lengths to which deacons and deaconesses had gone in their usurpation of power and authority. In the present instance it is not improbable that the deaconesses, because of the close relation of many of their functions to those of the deacon, arrogated to themselves clerical prerogatives. Hence, to impress upon them and upon everyone else the fact that they are laics, the council added: We have mentioned the deaconesses who are found on their clerical register, that, whatever their pretensions may be, since they have not received the imposition of hands, they are to be counted among the laity.[128]

CANON 20

Summary. On Sundays and from Easter to Pentecost prayers are to be said standing.

***Text.* Since some bend the knee (that is, pray kneeling) on Sundays and on the days of Pentecost, the holy council, in order to procure everywhere uniformity in all things, has decided that prayers be directed to God standing.**

Comment. In the Jewish synagogue it was the rule to pray standing, except in time of mourning, and it is very probable that the first Christians followed this rule, though later, we have reason to believe, kneeling became the common posture for prayer. From the earliest times it was the custom, on Sundays and during the fifty days between Easter and Pentecost, to say prayers standing, a custom which seemed to have fallen into desuetude in some localities, but which the council in this canon aimed to restore. Tertullian informs us that the Christians regarded it as improper on Sundays to say their prayers kneeling. This custom of saying them standing, he tells us further, was extended to the entire period from Easter Sunday to Pentecost.[129] He even found fault with those who stood on Saturday, for the reason that it was only on Sundays and during the days of Pentecost that kneeling was traditionally forbidden.[130] The reason was that these days were considered as commemorative of the resurrection of Christ, and through that resurrection we were raised up again. St. Basil, speaking of the custom, says that Christians during these days celebrate the remembrance of the resurrection of Christ, and consequently the restoration of fallen man through the mercy and condescension of

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[128] Wieland, "Die genetische Entwicklung d. sog. Ordines Minores in d. 3 ersten Jahrh.," in *Röm. Quartalschrift, 7 Suppl. Bd.* (Rom, 1897); Thomassin, *op. cit.*, I, lib. III, cc. 50, 51; Bingham, *Origines sive Antiquitates ecclesiasticae*, I, lib. II, c. 22.

[129] *De corona*, 3.

[130] *De oratione*, 23.

God.[131] Cassian says: "On these days we do not bend the knee in prayer because the bending of the knees is a sign of penance and sorrow. But in all things we observe on these days (that is, from Easter to Pentecost) the same solemnity as on Sunday, on which day our predecessors neither fasted nor bent the knee on account of their reverence for the resurrection of the Lord." [132] St. Jerome ranks the custom among matters of unwritten tradition.[133]

It may be added that in the early Church the faithful stood during the Eucharistic service. It was deemed the proper posture for all who offered sacrifice, as the faithful did and still do in union with the priest. And as sacrifice is consummated by participation, they retained that posture also at communion. We have a reference to that early custom in the canon of the mass, which describes those present as "standing around," *Memento . . . omnium circumstantium.*

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[131] *De Spiritu Sancto*, c. 27, no. 66.
[132] *Collat.* XXI, 20; *PL*, XLIX, 1195.
[133] *Dial. adv. Luciferianos*, 8; *PL*, XXIII, 155–82.

THE SECOND GENERAL COUNCIL (381)

First Council of Constantinople

History. The stringent measures adopted by Constantine at the Council of Nicaea to force acceptance of its decisions, and later his banishment of certain Arianizing prelates in order to stamp out the heresy and restore ecclesiastical peace, had rather the opposite effect and proved the beginning of a renewed and bitter warfare against the Nicene term *homoousios* and its champion, St. Athanasius, who in 328 succeeded Alexander in the see of Alexandria. This turn of events is hardly surprising when we consider that the Nicene definition of the orthodox faith as expressed by the term *homoousios*—and this was precisely the point at issue—was the achievement of the superior energy of a small and resolute minority, backed by the imperial authority, with the aid of half-hearted allies and against the opposition of the Arian faction. Of this latter party most of the members had subscribed to the Creed not from any sense of conviction, but to escape exile. As was to be expected, they would take up the battle anew at the first favorable opportunity. On the other hand, when those irresolute and half-hearted allies, whose theological erudition was in many cases mediocre, returned to their Churches and found themselves again in the atmosphere of a society that had not experienced the influences of the council, there developed in many a change that expressed itself in indifference or complete retreat. In looking for the causes, we must not omit Constantine himself. By his continuous and impertinent meddling in ecclesiastical affairs (and this applies equally to his successors), and by his lack of steadfastness, in the last analysis he contributed to the renewal and grave proportions of that conflict more perhaps than any other single contemporary factor. The exile of Eusebius of Nicomedia, who was banished by Constantine shortly after the council for his Arianizing activities, lasted only two years. By 328 he had not only been reinstated in his bishopric but he was in high favor with Constantine; and with his own guile, supported by a flood of Asiatic intrigues, a period of Arian reaction was inaugurated that seemed for a time to succeed in relegating the *homoousios* to the realm of myth so far as the Eastern Church was concerned. At the dying request of his sister Constantia, who was ardently devoted to the cause of Arianism, the Emperor recalled (*ca.* 335) Arius from his exile. Fortunately the heresiarch did not long

survive his return. On charges bearing *prima facie* evidence of their groundlessness, trumped up by the Bishop of Nicomedia and his clique of political prelates, the Emperor banished Athanasius and Eustathius of Antioch; an Arian bishop was thrust into the latter see, and that of Alexandria remained vacant. Shortly before his death he had himself baptized by that arch-Arian, Eusebius bishop of Nicomedia. This event prompted St. Jerome to say: *in Arianum dogma declinat*,[1] and Isidore of Seville, copying him, *in Arianum dogma convertitur*.[2] His successor in the East, Constantius, who indeed hated Arianism but hated Athanasius more, was merely a tool in the hands of the court prelates and the Eusebian faction.

The battle was not between the Church and Arianism strictly so called. As a matter of fact, the Arians, that is, those who outrightly denied the divinity of Christ, during this period of strife were very few in number. The opposition against which the Church had to contend consisted of a large heterogeneous party, composed mostly of bishops and priests, whose only purpose and only points of agreement were the annihilation of the term *homoousios* and the degradation of Athanasius, who had championed that term at the council and who was still its chief and most uncompromising defender. It was a conservative party as opposed to the strict and radical Arians, in which the latter, realizing their comparative weakness, took refuge. As distinguished from the old Arian school, the members of this party are known as Semi-Arians. They did not openly or even consciously deny the divinity of Christ. The views of some were substantially orthodox, but the majority of them were subordinationists, not realizing that such an attitude in its ultimate analysis militated against the divinity of the Second Person. In the course of the conflict and perhaps in the firm conviction that the achievement of Nicaea had been forever demolished, they opened warfare among themselves and as a result broke up into numerous factions, each seeking through formulas of faith the adoption and confirmation of its views by means of synods. New formulas of faith were composed almost over night to meet new phases of Arianism. There were nineteen such formulas, most of them variations of the Nicene formula, some more or less orthodox, others obviously heretical.

Since the death of Constantius in 361, Arianism had become a negligible factor in the West, while in the East, especially under Emperor Valens, it had greatly strengthened its forces. A faithful picture of ecclesiastical conditions in the East is furnished us by the imperial city of Constantinople, where the episcopal see had been in the hands of the Arians for forty years. Of the many churches in the city the Catholics possessed not a single one. When in 370 they elected their own bishop, their action was

[1] *Interpretatio Chronicae Eusebii Pamphili*, in Migne, *PL*, XXVII, 679.
[2] *Chronicon* 99, *PL*, LXXXIII, 1049.

frustrated by Valens, who expelled Evagrius, their choice, by force of arms. With the death of the Emperor in 378 a period of toleration set in for the Catholics. They were given an administrator of the diocese in the person of St. Gregory of Nazianzus. At the same time Theodosius the Great became emperor in the East, and under his régime Arianism in all its forms came practically to an end within the Empire. The new Emperor was baptized shortly after his accession to the throne in 379 and began work immediately to bring about ecclesiastical peace and unity in his dominions. To accelerate this movement, he summoned and assembled the Council of Constantinople (May, 381).[3] Its object was to provide a Catholic bishop for the see of Constantinople, to confirm the Nicene Creed, to reconcile the Semi-Arians with the Church and to put an end to the Macedonian heresy. It was attended by 150 Catholic bishops and about 36 heretical (Semi-Arian and Macedonian) bishops, and was presided over by Meletius bishop of Antioch. After Meletius' death, the president of the council was Gregory of Nazianzus (who in the meantime had been made bishop of Constantinople). On his resignation of the presidency of the council and his episcopal see, he was succeeded in both offices by Nectarius, who was a government official and still a catechumen, but was in rapid succession baptized, ordained priest, and consecrated bishop.

Among the prominent figures at the council were the following: Meletius of Antioch, who had arrived ahead of time in order to assist at the installation of Gregory as bishop; Timothy of Alexandria, Cyril of Jerusalem, Gelasius of Caesarea in Palestine, Helladius of Caesarea in Cappadocia, Ascholius of Thessalonica, who baptized Emperor Theodosius when he was taken dangerously ill in that city on his way to Constantinople;[4] Gregory of Nazianzus and Gregory of Nyssa, Peter of Sebaste (the youngest brother of St. Basil), Optimus of Antioch in Pisidia, Amphilochius of Iconium, Diodorus of Tarsus, Pelagius of Laodicea, Eulogius of Edessa, Acacius of Beroea, and Isidore of Cyrus in Syria. Outstanding bishops of the Macedonian representation were Eleusius of Cyzicus and Marcian of Lampsacus, both sees being located on the Propontis.[5]

Of the acts of the council only a few fragments have come down to us. Our knowledge of its proceedings is gathered chiefly from the accounts of the ecclesiastical historians, Socrates, Sozomen, and Theodoret. Its first transaction was the confirmation of Gregory of Nazianzus as bishop of Constantinople. It is fairly certain that it composed a lengthy and formal treatise on the orthodox teaching concerning the Trinity against the er-

[3] Socrates, V, 8; Sozomen, VII, 7; Theodoret, V, 7.
[4] Socrates, V, 6.
[5] Socrates, V, 8; Sozomen, VII, 7; Theodoret, V, 8.

rors of the Macedonians and also against those of the Apollinarians. This treatise has been lost, with the exception of a fragment, the first canon, which reaffirmed the Nicene Creed and anathematized all heresy. It drew up no new symbol of the faith. The famous Nicene-Constantinopolitan Creed, so long ascribed to this council, seems to have been the baptismal creed of the Church of Jerusalem published some years before by Epiphanius [6] in his *Ancoratus*, and with some modifications and additions adopted and authorized by the council as a true expression of the orthodox faith.[7] The clauses that refer to the Holy Ghost are a definition against the error of the Macedonians who denied the divinity of the Third Person. In conclusion the council issued four disciplinary canons and terminated its sessions in July of the same year. In regard to the number of these canons, the Greeks recognize seven. The earliest Latin versions on the other hand mention only four. What the Greeks call the fifth and sixth originated in the Synod of Constantinople held in 382; the seventh is of a still later period, if indeed it can be called a canon at all.

Before returning to their dioceses, the bishops sent their decisions to the Emperor for confirmation. On July 30 of the same year he issued from Heraclea an imperial decree to the effect that all churches must be restored to those bishops who acknowledged the equal divinity of the Father, the Son, and the Holy Ghost, and who held communion with Nectarius of Constantinople, with Timothy of Alexandria in Egypt, with Diodorus of Tarsus, and with other orthodox bishops named in the decree. All who are not in communion with the bishops above named, are to be expelled from the churches as notorious heretics.[8]

This council was an assembly of the episcopate of the Eastern Empire only. It was not ecumenical in its convocation or in its sessions. It was not intended to be ecumenical. There were no Latin bishops present, and the See of Rome was not represented. In the East the recognition of its ecumenical character seems to date from 451, that is, from the Council of Chalcedon, at which its Creed was read twice, and appeals to it were permitted by the papal representatives. In the West it was only gradually recognized as ecumenical.[9] Following the example of some of his predecessors, Gregory the Great accepted it as a general council, but only in its dogmatic declarations, that is, the Creed.[10]

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[6] Bardenhewer, *Gesch. d. altkirchl. Literatur*, III, 293–302.

[7] The Greek text of the creeds of Jerusalem and Constantinople is given by Hefele-Leclercq, II, 13. That of the latter is given also in Denzinger, *Enchiridion*, no. 86.

[8] Hefele-Leclercq, II, 40 f.

[9] *Ibid.*, 42–48; Kneller, "Zum zweiten allg. Konzil v. Jahr. 381," in *Zeitschr. f. kath. Theol.*, XXVII (1903), 789–99.

[10] Mansi, *Conc. ampliss. coll.*, Vol. III; Hardouin, *Conc. coll.*, Vol. I; Hefele-Leclercq, *Hist. des conciles*, II, 1–48; Kirsch, *Die Kirche in d. antiken griechisch.-röm. Kultur-*

CANON I

Summary. The Nicene Creed is confirmed, and every heresy is anathematized.

Text. **The confession of faith of the 318 fathers who were assembled at Nicaea in Bithynia is not to be abolished, but is to remain in force, and every heresy is to be anathematized, especially that of the Eunomians or Anomoeans, that of the Arians or Eudoxians, that of the Semi-Arians or Pneumatomachi, that of the Sabellians, the Marcellians, and that of the Photinians and the Apollinarians.**

Comment. As already stated, there is good ground for believing that this canon is a portion of a formal treatise drawn up by the council on the Catholic doctrine of the Trinity. It reaffirms the Nicene Creed, for the reason that it alone expresses the true relation of the Son to the Father. The parties enumerated and anathematized for opposing it or some other doctrine relating to the Trinity are seven, all of them owing their origin to the disruptive forces that were at work within the Arian sect. The Eunomians represented a phase of extreme Arianism. They carried to its legitimate issue the original Arian denial of the eternity of the Second Person. Aetius was their founder, Eunomius their leader. Not only in substance but in everything else the Son is unlike the Father. Ἀνόμοιος (unlike) became the cornerstone of their dogmatic system as against the ὁμοούσιος (identical in substance) of Nicaea, the ὁμοιούσιος (similar in substance) of the Semi-Arians, and later the ὁμοίος (τῷ πατρί, like to the Father) of the Acacians. The Arians or Eudoxians were the plain Arians of the period led by Eudoxius. Another name for them would be Acacians, for they adhered to that vague formula "like to the Father," invented by Acacius of Caesarea. The Semi-Arians or Pneumatomachi were a remnant of the Semi-Arian party after its disintegration. In the history of dogma

welt (Freiburg i. Br., 1930), pp. 412–18; Duchesne, *Early History of the Christian Church*, II, 341–54; Tixeront, *History of Dogmas*, II (St. Louis, 1923), 37–66; Otten, *Manual of the History of Dogmas*, I, 236–53; Batiffol, *Le Siège Apostolique* (Paris, 1924), pp. 83–145; Rauschen, *Jahrbücher d. christl. Kirche unter d. Kaiser Theodosius*, Freiburg i. Br., 1897; Schermann, *Die Gottheit d. hl. Geistes nach d. griechischen Vätern d. 4. Jahrh.*, Freiburg i. Br., 1901; Lietzmann, *Apollinaris v. Laodizea u. seine Schule*, in *Texte u. Untersuchungen*, Vol. I, Tübingen, 1904; Voisin, "La doctrine trinitaire d'Apollinaire de Laodicée," in *Revue d'histoire ecclés.*, II (1901), 32–55, 239–52; Newman, Tracts theological and eccl.: *The Heresy of Apollinaris*; *id.*, *Arians of the Fourth Century*; Gwatkins, *Studies of Arianism*, Cambridge, 1900; Bethune-Baker, *The Homoousios in the Constantinopolitan Creed*, London, 1905; Hort, Two Dissertations, II: *The Constantinopolitan Creed and Other Creeds of the Fourth Century*, London, 1876; Bright, *The Canons of the First Four General Councils*, Oxford, 1892; Turner, "Canons attributed to the Council of Constantinople 381, together with the names of the bishops," in *Journal of Theol. Studies*, XV (1914), 161–74.

they are more commonly known as Macedonians, after Macedonius, the Semi-Arian bishop of Constantinople. Besides their traditional aversion to the Nicene formula, they denied also the divinity of the Holy Ghost. The Sabellians (Monarchians) denied the element of personality in the Second and Third Persons, maintaining that they are but modes or emanations from the one Person of the Father. The Marcellians, so called after Marcellus bishop of Ancyra, taught a modified form of Sabellianism. According to the Photinians there is only one Person in the Trinity, the Son and Holy Ghost being merely an extension or expansion of the Father. Their Trinitarian doctrine was a combination of the errors of Theodotus and Sabellius. The Apollinarians had for their founder Apollinaris the Younger bishop of Laodicea. Their primary proposition was that Christ had a human body and a human sensitive soul, but no human rational mind, the place of this last being taken by the Logos. Their second proposition denied the human origin of His body and maintained that it was formed out of the divine essence.

CANON 2

Summary. Bishops are forbidden to go beyond their dioceses to Churches lying outside their jurisdiction; nor shall they disturb the Churches. Those Churches that are among the barbarian nations are to be ruled according to the custom obtaining from the times of the fathers.

Text. **Bishops who are outside their diocese shall not go to Churches that are outside their territorial boundaries, and they shall not disturb the Churches; but, according to the canons, the bishop of Alexandria is to administer the affairs of Egypt only, the bishops of the East shall rule the East only, keeping intact the prerogatives of the Church of Antioch, according to the canons of Nicaea; and the bishops of the diocese of Asia shall rule over Asia only, those of Pontus over Pontus only, those of Thrace over Thrace only. Unless invited, bishops are not to go outside their diocese, either for the purpose of ordaining or for any other act of ecclesiastical administration. But if the rule prescribed for the dioceses be observed, it is clear, that in every eparchy (province) the affairs are to be managed by the eparchal synod, according to the Nicene decisions. The Churches of God that are among the barbarian nations are to be ruled in accordance with the custom obtaining from the times of the fathers.**

Comment. This canon accepts and develops the Nicene legislation (canons 5 and 6) as to the territorial arrangements of the ecclesiastical hierarchy. It aims to stop bishops from wandering about in dioceses other than their own and taking part in synods of other dioceses or otherwise interfering in affairs that lie outside their region of jurisdiction, as was

done, for example, by Peter of Alexandria when he sanctioned the attempt of Maximus to obtain the see of Constantinople (cf. canon 4). It tells the bishops of Alexandria, Antioch, and other dioceses to stay at home and attend to their own affairs. The prohibition extends not only to metropolitans or what were later known as patriarchs and their immediate subordinates, but also to all suffragan bishops. It may be noted that in the list of dioceses Alexandria stands out prominently, no doubt because of the exceptional powers enjoyed by its bishop within his diocese (cf. canon 6 of Nicaea). The bishop of Alexandria alone is named, whereas in the case of the other dioceses "the bishops" are spoken of. The great sees of Ephesus, Caesarea in Cappadocia, and Heraclea are not mentioned. Even in the case of the diocese of the Orient, Antioch is mentioned only in a clause referring to the non-infringement of its prerogatives. No reference is made to the Western Church because the council was entirely Oriental. Attention is called to the provision of Nicaea (canon 5) that the affairs of each province are to be supervised also by provincial synods that are to be held twice a year. As to those Churches that are outside the limits of the Roman Empire and among barbarian nations, these are to be attended to by that Church within the Empire from which they originally received their episcopate, according to a custom in force since the times of the fathers. Thus the Church of Ethiopia was subject to Alexandria ever since Athanasius had consecrated Frumentius as its first bishop. The Church of Armenia, established by Gregory the Illuminator, received its episcopate from Caesarea in Cappadocia and was subject to it at the time of the council. A daughter Church of Antioch beyond the limits of the Empire was the Church of Georgia, or Iberia. Its apostle was a Christian lady, St. Nunia or Nino, who had been taken captive by the Iberians. By her devout life and her miraculous cure of a child, she laid the foundations of Christianity in that country. About 326 King Miraeus, whom she had converted, applied to Constantine for bishops, and Eustathius of Antioch went there with priests and deacons and ordained a certain John as first bishop of Iberia.[11]

CANON 3

Summary. The bishop of Constantinople is to be honored next after the bishop of Rome.

***Text.* The bishop of Constantinople shall have the primacy of honor after the bishop of Rome, because the same is New Rome.**

Comment. This is a brief canon, but historically very famous. It is the sharp point of a wedge that in the ninth century split the Christian world

[11] Socrates, I, 20; Sozomen, II, 7; Theodoret. I, 24; Rufinus, I, 10.

into halves, cutting off the vast majority of Eastern Christians from union with the West, a cleavage that has continued to our own day. If we search for the deeper causes of the great Eastern Schism, we shall find that it was not the *Filioque* or the rights of Ignatius that brought about the division, but the rivalry, jealousy, and hatred that Constantinople harbored against Rome. When Constantine moved the seat of his government to Byzantium, he aimed to make that city in every way equal to the old imperial city of the West. Byzantium became Constantinople, New Rome. Under these circumstances its bishop, once the humble suffragan of Heraclea, thought that his dignity should be on a par with the dignity of the city and, since Constantinople was the second city of the Empire, that he should be second only, if not almost equal, to the bishop of Old Rome. His contention was based on the rule accepted by the entire Greek Church, that the rank of a bishop is to be measured according to the rank of the city in which he resides. At the time of our council there already existed among the Eastern bishops a certain amount of jealousy of the bishop of Rome. They were jealous of his great position and authority, and to counterpoise these in some measure they decided on the exaltation of their own Greek fellow-bishop of the imperial city on the Bosporus. In this canon, therefore, the council gives to the bishop of Constantinople a primacy of honor after the bishop of Rome; that is, the bishop of New Rome is to take precedence of the metropolitans, later patriarchs, of Alexandria and Antioch and is to come next after the metropolitan of Old Rome. So far as the phrase "primacy of honor" is concerned, there is here no question of supremacy or ecclesiastical jurisdiction, though it was not so long afterward that he began to claim and to exercise such jurisdiction over the six provinces of Thrace, till then subject to Heraclea, and over the twenty-two provinces of Asia Minor and Pontus, originally subject to Ephesus and Caesarea. These rights of jurisdiction, though usurped, were confirmed by the Council of Chalcedon (451) in its famous 28th canon.

Our council, of course, recognized the absolute priority of rank reserved to the bishop of Rome. In giving the reason, however, for its bestowal of the primacy of honor next to Rome on the bishop of Constantinople, namely, "because the same is New Rome," it asserts by implication that the absolute priority of Rome has, like the *primatus honoris* of Constantinople, a basis simply and purely political, namely, the imperial majesty of Old Rome, a statement that is untrue to facts. The primacy of Constantinople rested indeed on a basis solely political, on no other; but the Church of Rome was what it was for a variety of reasons, the first and foremost of which was the succession of St. Peter. Of course this purely human or political reason which the council gave as the basis of Rome's ancient

supremacy and authority, has never been admitted by the Apostolic See. This canon, moreover, was subversive of that hierarchical arrangement that had been recognized and canonized by the Nicene Council (canon 6). It was prejudicial to the status of the great sees of Alexandria and Antioch, which hitherto had ranked as second and third in the hierarchical succession. Naturally enough, Rome ignored this wholly unjustifiable and arbitrary rearrangement of an ancient order; not that her own first place was disputed, but because she disapproved so radical a disturbance in the old order of the hierarchy. Hence she rejected this canon, as also the 28th of Chalcedon. Although at the Eighth General Council (869) the Roman legates signed the 21st canon, which acknowledged Constantinople as second in hierarchical rank, it was not till the Fourth Lateran Council (1215) that the Latin patriarch of Constantinople was formally allowed this place. In 1439 the Council of Florence gave it to the Greek patriarch.[12]

CANON 4

Summary. Maximus is deposed as bishop of Constantinople and the orders conferred by him are declared invalid.

***Text.* In regard to the Cynic Maximus and the disorders that took place in Constantinople on his account, we declare that Maximus never was bishop nor is now, and that the clerics of whatever order ordained by him are in truth not ordained at all, since everything undertaken in his behalf and by him is invalid.**

Comment. Maximus had come from Alexandria to Constantinople about the same time that Gregory of Nazianzus arrived there. In the guise of a Cynic philosopher he represented himself to Gregory as a convert and a confessor of the faith, declared his staunch adherence to the Nicene Creed, and in other ways manifested an earnestness in the direction of orthodoxy. Gregory, then administrator of the diocese of Constantinople, accepted his own account of his antecedents with unsuspecting simplicity, entertained him hospitably, gave him his complete confidence, and even publicly eulogized him in his presence in a discourse that is still extant (*Oratio* 25). All this time, however, Maximus was intriguing to obtain the bishopric for himself and the chief supporters of his intrigues were in Alexandria. Arrangements had been made with Peter II, metropolitan of that see, to send some bishops to Constantinople. These arrived in 380. Escorted by a group of sailors, during the night and while Gregory was ill they proceeded to the church and consecrated Maximus bishop of Constantinople.

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[12] Cobham, *The Patriarchs of Constantinople* (Cambridge, 1911), pp. 1–40; Fortescue, *The Orthodox Eastern Church* (London, 1908), pp. 28–47, 87–97.

Clergy living in the vicinity noticed that despite the early morning hour there were people in the church. On investigation they learned what was taking place and gave the alarm. The entire neighborhood, Catholics and Arians, rushed to the church and in the midst of the ceremony expelled the intruders, who then betook themselves to the home of a flutist where the ceremony was completed. The outrage aroused a bitter popular feeling which resulted in the expulsion of Maximus from the city. He appealed to Theodosius, but the Emperor, as Gregory tells us, "spurned him like a dog." These are the disorders referred to in the present canon. After an investigation the council decides that Maximus never was bishop nor is now, and declares invalid all episcopal acts performed in his behalf and by him.[13]

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[13] Lübeck, *Die Weihe d. Cynikers Maximus zum Bischof v. Konstantinopel in ihrer Veranlassung dargestellt*, Fulda, 1907; Ullmann, *Gregorius v. Nazianz d. Theologe* (Gotha, 1866), pp. 137–42.

THE THIRD GENERAL COUNCIL (431)

Council of Ephesus

History. Against the errors of Nestorius the Third General Council defined the true personal unity of Christ. It also declared Mary the Mother of God, and renewed the condemnation of Pelagius. The Council of Nicaea, against Arius, had defined Christ's true divinity; and the Council of Constantinople, against the Apollinarians, had declared His perfect humanity. But neither of them had declared directly or explicitly the nature of the union between His divinity and His humanity; they did not say whether that union is moral or physical. Although the latter had been the traditional teaching of the Church, Nestorius took advantage of this loophole to justify his Antiochene doctrine of the incarnation. This error, by denying the hypostatic union, spelled the destruction of that dogma.

Nestorius was not the father of Nestorianism, any more than Arius was the father of Arianism. The heresy was older than he, going back well into the fourth century; if it goes under his name, that is because he was the first to defend it openly. St. Cyril of Alexandria, the chief opponent and prosecutor of Nestorius at the council, traced it to Diodorus, afterward bishop of Tarsus (d. *ca.* 392). In his polemics against the Arians and Apollinarians, Diodorus upheld the complete humanity of Christ by separating the two natures as sharply as possible. In this he followed the tradition of the Antiochene school, which stressed Christ's humanity and kept in the forefront the distinction of the two natures in the God-man, as opposed to the school of Alexandria which emphasized Christ's divinity and personal unity.[1] The former reached the zenith of its career under the leadership of Diodorus, whose most outstanding pupil was St. John Chrysostom and whose most radical one was Theodore of Mopsuestia (d. 428). Nestorianism was a finished product before it reached Nestorius. He was a pupil of Theodore, and if the latter escaped condemnation during his lifetime it was because the fact of his heresy was not known. Cyril of Alexandria called him and Diodorus the *Patres Nestorii blasphemiae.*[2] At the Fifth General Council (553) both his person and writings were condemned.

[1] Cf. on these schools, *Dict. de théol. cath.*, I, 805–23, 1435–39; Nelz, *Die theologischen Schulen d. morgenländischen Kirchen,* Bonn, 1916; Kirsch, *Die Kirche in d. antiken griechisch.-röm. Kulturwelt,* pp. 529–35.

[2] *Epist. LXXI ad Theodosium,* Migne, *PG,* LXXVII, 343.

The fundamental error in the Christological system of Nestorius consisted in this, that the two natures in Christ stand for two distinct personalities which are united in one moral person. To him the existence of a nature without its connatural personality was something inconceivable. Jesus of Nazareth and the divine Word are two distinct persons. What is divine and human in Christ is united by a union that is external and moral. The Word dwelt in the man Jesus, the son of Mary, as in a temple. The incarnation is nothing more than the indwelling of the Word in a man. The Word was not born of a virgin, nor did the Word suffer, but he suffered in whom the Word dwelt. God cannot be born, neither can He suffer and die. Accordingly, Mary is not the Mother of God (*Theotokos*), but of a man, of Christ (*Christotokos*). Were she the Mother of God, then the Word would have had a beginning in her. Moreover, the mother must be of the same nature as the son; wherefore either Mary is a Goddess or she is the mother only of a man. This is briefly what St. Cyril called the blasphemy of Nestorius. Like all Antiochene theologians, Nestorius did not realize that the personality of Christ is in the Word; that the divine and human natures have each their own faculties, their own operations, all of which belong to one and the same Person, and that of the incarnate Word can and must be predicated all the properties of His humanity and *vice versa*. The *communicatio idiomatum*, therefore, had no place in his system.

The trouble began when, shortly after his elevation to the patriarchate of Constantinople in 428, Nestorius set forth his doctrine in a series of sermons, which at once aroused the opposition of his clergy and people. Cyril of Alexandria, who soon received news of the doctrinal innovations, lost no time in taking steps to repress them. After several warnings, in reply to which Nestorius as much as told him to mind his own business, he forwarded his correspondence with the heresiarch to Pope Celestine, asking him to settle the matter. The latter assembled a council of forty bishops in Rome and, after a careful examination of the data submitted to him, contented himself with issuing a general condemnation of Nestorius. In his reply to Cyril he charged him to assume his authority and in his name serve notice on Nestorius that unless he formally recanted within ten days after receipt of this notice, he was to consider himself excommunicated and deposed. On receipt of these instructions, Cyril (November, 430), with the aid of his suffragans in council assembled, drew up a form of recantation, a formula of belief which the heretic was to subscribe if he decided to submit to the decision of the Pope. The formula begins by officially notifying him of his condemnation, gives a clear exposition of the orthodox teaching concerning the hypostatic union, and concludes

with twelve anathematisms summing up that teaching.[3] This formula was dispatched to Constantinople. As was no doubt expected, Nestorius refused to sign it. Supported by his friends, he issued in reply a set of twelve counter-anathematisms, in which he insisted on the orthodoxy of his own doctrine and branded as Apollinarian that of Cyril. However, before Cyril's communication reached Constantinople, Nestorius had induced Emperor Theodosius II to convoke a general council to decide the difference between Cyril and himself. As a matter of fact, he had earlier in one of his letters to the Pope broached the same subject. The monks of Constantinople also had appealed to the Emperor to utilize that expedient to put an end to the scandals of their bishop. The summons was issued by the Emperor on November 19, 430, to the metropolitans to meet at Ephesus on the following Pentecost (June 7, 431). Each was to bring with him a number of prominent suffragans, and those who came late would be held to a strict account before God and himself. In his reply to the Emperor's invitation, the Pope approved his action and informed him of his inability to attend in person but announced that he would send representatives. Theodosius very much desired the presence of the great St. Augustine at the council, and to that end dispatched a special messenger to him with an invitation couched in honorable terms. But the saint had died on August 22, 430, during the siege of Hippo. The disorders consequent upon the Vandal invasion of northern Africa prevented the news from reaching Constantinople.

Nestorius with sixteen suffragans was among the first to arrive at Ephesus. A few days before Pentecost, Cyril arrived with fifty bishops, this number constituting about half of his suffragans. Juvenal of Jerusalem with his bishops and the bishops of Macedonia under the leadership of Flavian came a few days later. Memnon bishop of Ephesus was there with forty suffragans. Present were also twelve bishops from Pamphylia. On the day set for the opening of the council nearly two hundred bishops were present. It was found impossible, however, to proceed with the opening on the day appointed, as neither John the patriarch of Antioch and his suffragans nor the papal representatives had yet arrived. On that day Cyril received a note from John saying that he was in the vicinity of Ephesus and would be there in five or six days. The opening was delayed sixteen days, and John had not yet arrived. To the majority it was clear that this delay was intentional; John being an old friend of Nestorius did not wish to take part in his condemnation. The heat was intense and several bishops had already succumbed to it. Then came another note from

[3] Denzinger, *Enchiridion*, nos. 113–24; Mahé, "Les anathématismes de saint Cyrille d'Alexandrie," in *Revue d'histoire ecclésiastique*, III (1906), 505–42.

John, saying that he did not wish the opening of the council to be delayed on his account, and suggesting to Cyril that he proceed and do what should be done. Cyril and the majority of the bishops decided to wait no longer. In spite of remonstrances from sixty-eight bishops and from the imperial commissioner Candidianus, who also was a friend of the heretic, the council assembled on June 22 in the cathedral of the *Theotokos* (Mother of God). Cyril, as patriarch of Alexandria and as representative of the pope—in the absence of a reply from Rome he considered his commission to be still in force—assumed the presidency. The council opened with the reading of the Nicene Creed and the correspondence between Cyril and the Pope and Nestorius. Citations to Nestorius to present himself went unheeded by him. Of the sixty-eight bishops who had demanded a delay and refused to take part, about twenty rallied to the support of Cyril and the council; the rest, together with the suffragans of Nestorious, remained away. The session continued all day and well into the night. Since the excommunication by the Pope was still in force, and as Nestorius had contumaciously refused to answer the threefold summons enjoined by the canons, the sentence of the council was as follows:

"Since in addition to other things, the most impious Nestorius has neither obeyed our citation, nor received the most holy and God-fearing bishops whom we sent to him, we were compelled to examine his ungodly teachings. And having discovered from his letters and from his writings, as well as from the discourses delivered by him in this metropolis, which have been testified to, that his opinions and teachings are impious, we, compelled thereto both by the canons (Apost. canon 74) and by the letter (to Cyril) of our most holy father and colleague Celestine, bishop of the Roman Church, have with many tears arrived at this sorrowful sentence against him: Our Lord Jesus Christ, who has been blasphemed by him, has defined by this holy synod that the same Nestorius is excluded from the episcopal rank and from all sacerdotal communion." [4]

This sentence received the signatures of more than two hundred bishops. To forestall the dissemination of false reports by Candidianus and others, the council wrote to the Emperor and to the people and clergy of Constantinople, informing them of what had taken place at Ephesus from the citation of Nestorius to his deposition. Similar letters were sent by Cyril to his friends in Constantinople and to some Egyptian bishops and priests. Five or six days after the first session, John of Antioch arrived with sixteen suffragans. Instead of taking part in the council, he refused to have anything to do with it, but immediately formed a synod or council of his own bishops and of others (adherents of Nestorius) already at Ephesus.

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[4] Mansi, IV, 1211; Hardouin, I, 1422; Hefele-Leclercq, II, 311.

This synod (*conciliabulum*) of forty-three bishops, after some preliminary discussions, deposed Cyril and Memnon as guilty of violence and heterodoxy and excommunicated their adherents. It sent to the Emperor, as also to the clergy and people of Constantinople, a one-sided, consequently false, report of what had taken place. Guided by this report, the Emperor annulled what had been done by the legitimate council and ordered that a collective session be held in which the entire matter was to be reconsidered. Cyril and his council in a letter dated July 1, 431, acquainted the Emperor with the facts, at the same time informing him that he had been misled by the false reports of Candidianus and John of Antioch.

On July 10, the papal legates arrived: two bishops, Arcadius and Projectus, and the Roman priest Philip. The former represented the Roman council, the latter was the Pope's personal representative. Cyril, also a papal representative, retained the presidency of the council. The legates had been instructed to take no part in the discussions, but to pass judgment on them. On this day and on the following, two sessions were held in the episcopal residence. First was read Celestine's letter which the legates had brought with them for the council. After a general exhortation to the council, the letter declared that the legates had been instructed to carry out the Pope's former decision in regard to Nestorius, that is, it charged the council to make effective the decision already given by the Pope, expressing confidence that it would agree. The legates having read the acts of the first session, declared the sentence against Nestorius canonical and in accordance with ecclesiastical discipline; but, following papal instructions, they demanded that the condemnation of Nestorius be read formally in their presence. After that each one separately confirmed the sentence in the Pope's name; then they signed the acts of the first three sessions. In a synodal letter to the Emperor, subscribed by all the bishops present, he was informed that already before the opening of the council at Ephesus the teaching of Nestorius had been condemned by the Western bishops in a Roman council presided over by Celestine. The Pope had so informed Cyril in a letter which was read in the first session of the council. Now the Pope's legates have arrived and have formally confirmed the sentence of Ephesus.

Cyril felt himself reinforced with this formal approval, and decided now to take action against John of Antioch. To this matter were devoted two sessions, which were held in the cathedral. Together with Memnon he presented a written protest against the pseudo-council of John, who was thrice cited to appear before the council. He replied by setting up a placard in the city branding the council as an Arian, Apollinarian, and Eunomian assembly. Thereupon, in the fifth session (July 17) he was suspended and excommunicated together with thirty-five bishops who

had supported him. The council sent a report of these proceedings to the Pope and to the Emperor. In that to the Pope it informed him that it had repeated the condemnation of the Pelagians pronounced in the West. This act, it may be added, put an end to Pelagianism in the East. At the end of the sixth session (July 22) the council ordained, under penalty of excommunication and deposition, that no other creed than the Nicene is to be used or composed, a declaration that later became famous as the source of objections to the insertion of the *Filioque* in the so-called Constantinopolitan Creed and to the decrees of later councils. In the seventh and last session (July 31) it approved the claim of the bishops of Cyprus for exemption from the jurisdiction of Antioch. It also drew up a circular letter to all the bishops, clergy, and laity and attached thereto six canons, all of which are directed against the adherents and supporters of Nestorius.

Theodosius, who, largely through misinformation supplied by the friends of Nestorius, had championed the cause of the heretic, now at the instigation of the same enemies of Cyril, reached the almost incredible conclusion that he should confirm the depositions decreed by both councils; that is, the deposition of Nestorius by the legitimate council and the deposition of Cyril and Memnon by the pseudo-council of John of Antioch. An effort to bring about harmony at Ephesus between the council and the Antiochene party failed, for neither would have anything to do with the other. Cyril and Memnon were seized and kept apart in close confinement. Finally the Emperor asked each party to send eight envoys to meet him at Chalcedon, where the whole matter would be threshed out. Among those representing the council were Philip the papal legate, and Bishop Arcadius, another papal representative. At the end of the discussions the Emperor was convinced that Nestorius had been justly deposed. He released Cyril and Memnon and recognized the council headed by the former as the legitimate one. After choosing the priest Maximian to replace Nestorius as patriarch of Constantinople, the council was dissolved about the beginning of October, 431.[5]

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[5] Mansi, *Concil. nova et ampliss. coll.*, IV; Hardouin, *Concil coll.*, I; Schwartz, *Acta conciliorum oecumen.*, Tome I: *Concilium universale Ephesenum*, Vol. IV–V, Leipzig, 1922–26; *id.*, "Zur Vorgeschichte d. ephes. Konzils," in *Hist. Zeitschrift*, CXII (1914), 237–63; *id.*, "Neue Aktenstücke z. ephes. Konzil v. 431," in *Abhandl. d. Bayr. Akad. d. Wiss., Phil.-hist. Klasse*, 30, 8, München, 1920; *id.*, "De episcoporum catalogis concilii ephesini I," in *Miscellanea Fr. Ehrle*, II (Romae, 1924), 56–72; Hefele-Leclercq, *Histoire des conciles*, II, 219–377; Kirsch, *op. cit.*, pp. 544–58; Duchesne, *Early History of the Christian Church*, III, 219–56; Tixeront, *History of Dogmas*, III, 10–51; Otten, *Manual of the History of Dogmas*, I, 387–400; Batiffol, *Le Siège Apostolique* (Paris, 1924), pp. 337–97; Fortescue, *The Lesser Eastern Churches* (London, 1913), pp. 54–87; Haase, *Altchristl. Kirchengesch.* (Leipzig, 1925), pp. 279–93; Fendt, *Die Christologie*

CANON I

Summary. If any metropolitan, having revolted against the ecumenical council, joined the assembly of revolters, or adheres to the opinions of Celestius, let him be deposed.

Text. If any metropolitan of a province has revolted against the holy and ecumenical council, and gone over to the assembly of revolters, or afterward shall go over, or has held or holds the opinion of Celestius, he has no longer any jurisdiction over the bishops of his province and is cast out by the council from all ecclesiastical communion and suspended. It is the duty of the bishops of his province and of the neighboring metropolitans who are orthodox, to see to it that he is completely suspended from the episcopate.

Comment. This canon was addressed to those bishops who did not attend the council either because of their health or on account of matters connected with their Churches. Its purpose was to inform them of the decisions arrived at and the resolutions adopted in regard to Nestorius and his followers. By "the assembly of revolters" referred to in this and the following canon, is meant the *conciliabulum* of John of Antioch.

Celestius was a disciple of Pelagius, who denied original sin and the necessity of divine grace, and affirmed that man by his natural powers is capable of attaining holiness and eternal salvation. He had come to Constantinople in 429 with four deposed Pelagian bishops. Nestorius was not in sympathy with their teaching, yet he gave them good grounds to look to him for support, though he undoubtedly knew that Celestius had been expelled from that city by his predecessor, Atticus. In the same year Marius Mercator, a layman and friend of St. Augustine, who was then in Constantinople, composed his *Commonitorium super nomine Caelestii*,[6] in which he exposed the machinations and heretical character of the five exiles. As a result they were banished by Theodosius in 430; whereupon Nestorius sent a letter of sympathy to Celestius. In its letters to Pope Celestine and to Theodosius the council links together the Nestorians and the followers of Celestius, informing them that adherents of the heterodoxy of Celestius are among the supporters of John of Antioch.

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des Nestorius, Kempten, 1910; Jugie, *Nestorius et la controverse nestorienne*, Paris, 1912; Bethune-Baker, *Nestorius and his Teaching*, Cambridge, 1908. For further literature, cf. Kirsch, *op. cit.*, 829 f.

[6] Migne, *PL*, XLVIII, 63–108.

CANON 2

Summary. Bishops who went over to the assembly of the revolters after having signed the deposition of Nestorius, are deposed.

Text. If any provincial bishops have absented themselves from the council and attached themselves to the revolt or attempted to do so, or did go over to the assembly of revolters after having signed the deposition of Nestorius, it has pleased the holy council that these be deposed from the priesthood and forfeit their rank.

CANON 3

Summary. Orthodox clerics suspended by Nestorius are to be restored, and no orthodox cleric need render obedience to bishops who have revolted.

Text. If any clerics in any city or country place have on account of their orthodoxy been suspended from their ministry by Nestorius or his supporters, it is thought right that these should be again restored to their proper rank. In general, clerics who agree with the orthodox and ecumenical council, we urge in no way to render obedience to bishops who have revolted or who may revolt.

CANON 4

Summary. Clerics who revolt are to be deposed.

Text. If any clerics should revolt and dare either publicly or privately to hold with Nestorius or Celestius, the holy council decides that these be deposed.

CANON 5

Summary. If anyone condemned by this council or by his bishop is received by Nestorius, it shall profit him nothing.

Text. All those who on account of improper conduct have been condemned either by the holy council or by their own bishops, and whom Nestorius and his supporters uncanonically and with complete indifference attempted or may attempt to restore to communion or to their rank, are to gain nothing from this, but shall remain deposed.

CANON 6

Summary. Anyone aiming to undo the work of this council, if a cleric, is to be deposed; if a laic, excommunicated.

Text. Similarly, in regard to all who shall aim to undo in any way any decision of this holy council of Ephesus, the holy council de-

cides that if they be bishops or clerics, they are to be expelled from their ranks (deposed); if laics, excommunicated.

Comment. The laics referred to here are first and foremost the imperial commissioners, Candidianus and Count Irenaeus, both ardent supporters of Nestorius, who worked hard for him during the entire proceedings of the council. This reference to laics is an expression of fear that these two would use their influence with Theodosius to support the party of John of Antioch against Cyril and the orthodox council. As a matter of fact, Candidianus made every effort to hinder Theodosius from seeing the authentic reports of the council's proceedings, and to this effect the council informed the Emperor in writing. It was through the influence of Irenaeus after he had returned to Constantinople that the imperial court pronounced against Cyril, until the arrival of Cyril's own representatives changed the situation in his favor.

THE FOURTH GENERAL COUNCIL (451)

Council of Chalcedon

History. To Nestorius the union of the divine and human natures in Christ was not a union in one hypostasis but rather a *conjunctio intimissima et inseparabilis*. Stressing the distinction of the two natures, he was forced to postulate a dual personality in Christ. St. Cyril, on the other hand, maintained the personal and hypostatic union, two perfect and distinct natures united in one Person. This teaching had been defined by Pope Celestine and the Council of Ephesus. There were, however, among the followers of Cyril those who, actuated by an excessive dislike of Nestorianism, went to the opposite extreme, minimized the human element and admitted only one nature in Christ. According to them the human nature in Christ, instead of retaining its own proper activity and identity, is completely absorbed by the divine. This heresy is known as Monophysitism (*μόνος+φύσις*, single nature), sometimes also as Eutychianism, though the latter is nothing more than a nickname unfairly applied by Catholic scholars. Eutyches contributed nothing to it except his name, and the Monophysites looked not to him but to Cyril, that is, from an orthodox view, to Cyril misinterpreted, as their founder and leader. The error can be traced back to Apollinarianism. At any rate, so long as Cyril lived he seems to have succeeded in holding this party, of which his own archdeacon Dioscurus was the leader, in check and within the bounds of orthodoxy. With his death, however, in 444, there passed also that comparative peace which the Eastern Church had enjoyed since his reconciliation with John of Antioch in 433. Cyril was succeeded by his above-mentioned archdeacon Dioscurus, a violent, vindictive and ambitious man. The Cyrillians and anti-Nestorians inaugurated a new offensive. The crisis brought about by Eutyches was the occasion of a conflict from the results of which the Eastern Church has not recovered to this day. Eutyches was archimandrite or superior of a monastery outside the walls of Constantinople which housed over three hundred monks. He was an ignorant and stubborn man, had been a monk for thirty years, and was now seventy years of age, but possessed considerable influence with Emperor Theodosius II through his disreputable minister Chrysaphius. He was an ardent follower of Cyril and an uncompromising opponent of Nestorianism. In 448 he was accused of heresy by Eusebius bishop of Dorylaeum, before a synod of

thirty bishops assembled by St. Flavian patriarch of Constantinople to consider matters of discipline. At first he refused to answer the summons, but after the third citation appeared. In the presence of the synod he maintained that before the incarnation Christ was of two natures, but after the incarnation there is only one nature in Him. Moreover, he denied Christ's consubstantiality with us. On his refusal to accept the orthodox doctrine which maintained two natures after the union, Flavian excommunicated him and deprived him of the government of his monastery and the exercise of the priesthood. He now appealed to Pope Leo I, to the Emperor, and to the principal bishops of the East. He placarded the city of Constantinople in defense of his cause to gain its people to his side. In the meantime he left no stone unturned to induce the Emperor to convoke a general council to examine his case anew. At the united request of Eutyches and Dioscurus, who stood on the same doctrinal ground, the Emperor consented and on March 30, 449, sent out the letters of convocation. Ephesus was the city selected, and August 1, 449, was the date set for the opening. Though he was not consulted and did not wish to submit the matter to a council, the Pope agreed. In violation of the canons, Dioscurus restored Eutyches to communion with the Church and to the government of his monastery, even before the council, which was called to examine the matter, had given a decision on it; and despite the facts that Eutyches had been excommunicated by a competent tribunal and that Dioscurus had no jurisdiction whatever over him.

The council was attended by 127 Eastern bishops, the time being too short to enable Western bishops to be present. The Pope could not respond to the Emperor's wish expressed in his invitation to appear personally; he therefore appointed three legates, by whom he sent a letter to the council. In this letter he appealed to his *Epistola Dogmatica* to Flavian, in which the orthodox doctrine concerning the two natures in Christ was clearly explained and which he wished to have read at the council and to be accepted by it as a rule of faith.[1] The Emperor gave the presidency to Dioscurus patriarch of Alexandria, an out-and-out ecclesiastical gangster. The Pope called him the "Egyptian plunderer." He surrounded himself with a disorderly and discredited crowd of Egyptian bishops and monks, all opponents of Flavian, Eusebius of Dorylaeum, and the others who had been instrumental in bringing about the excommunication and deposition of Eutyches in the Constantinopolitan Synod of 448. Flavian and six other of these bishops were present at the council, but they were

[1] The original text of this famous letter, with the omission of a few unimportant sentences, is given in a note in Hefele-Leclercq, II, 569–80. In the Ballerini edition of the works of Leo I, letter 28, I, 801–37 (Migne, *PL*, LIV, 755–82). An English translation of it may be found in *The Nicene and Post-Nicene Fathers*, 2d series, XIV, 254–58.

not permitted to sit as judges. Since, however, he was as great a heretic as Eutyches on the point in question, there was little chance for the defenders of orthodoxy to obtain a hearing. By order of the Emperor, who was not happy unless he meddled in ecclesiastical affairs, the question before the council was whether Flavian had justly excommunicated and deposed Eutyches for refusing to admit two natures in Christ. That question had been settled by the Pope before the council assembled. He sent his legates to see to it that the members of the council acceded to what he had already defined. On several occasions the legates demanded that the Pope's letters be read, but they were completely ignored; and so were the letters. Instead there was read a letter of the Emperor ordering the admission to the council of that notorious and fanatical anti-Nestorian monk, Barsumas of Nisibis, with his mob of equally fanatical monks. Under these circumstances, Eutyches the heretic was declared orthodox and reinstated, and all those bishops who opposed the decision of the council were sent into exile by the Emperor. Flavian of Constantinople was mobbed by Barsumas' monks and died shortly after.

On account of the injustices and gross violence of Dioscurus and his henchmen, Leo I christened it a *Latrocinium*, a Robber Council, a name which history has retained. While the Emperor sanctioned its misdeeds, the Pope in a Roman synod condemned it and repudiated its acts. The Pope now appealed to the Emperor to convoke a new general council to undo the injustices of that of Ephesus, but he declined. His sudden death in 450 completely changed the religious situation in the East, and it was thought that the way was now open for the assembling of another council.[2]

Theodosius was succeeded by his sister Pulcheria, who as early as 415 had been proclaimed *augusta* and had become associated with him in the government of the Empire. She offered her hand and the imperial throne to Marcian, a brave and broad-minded general. Both were staunchly orthodox. At first the Pope favored a new council. Later, however, when the Emperor communicated to him his willingness to call one, he changed his mind; first, because of the invasions of Attila, many bishops of the West could not desert their flocks; and secondly, owing to the changed religious conditions in the East, he saw little need for one now. The evil that had been done at Ephesus had, thanks to Marcian and the Empress, been in a great measure repaired. The victims of Dioscurus and his satellites had been recalled from exile. Eutyches had been lodged in a stronghold

[2] Hefele-Leclercq, *Hist. des conciles*, II, 499–621; *Appelatio Flaviani. The Letters of Appeal from the Council of Ephesus 449*, ed. Lacey, London, 1903; Haase, *Altchristl. Kirchengeschichte* (Leipzig, 1925), pp. 293–99; art. "Dioscurus," in *Catholic Encyclopedia.*

outside the imperial city. Many of those who repudiated orthodoxy at Ephesus, had by this time repudiated the decisions given in their name and subscribed to the dogmatic letter of Leo. As to Dioscurus, Juvenal of Jerusalem, and some others who thus far had shown no signs of repentance, the Pope had made up his mind to attend to these himself. The Pope accordingly wrote to the Emperor, giving the reasons for his change of mind. However, before receiving this letter, Marcian, wishing that this question of the incarnation should be thoroughly discussed by such an assembly, issued on May 17, 451, in his own name and that of Valentinian III emperor of the West, the summons to a council to be held at Nicaea in Bithynia, which was to have opened the following September 1. Though much displeased with this action, the Pope agreed to send representatives. Had the Emperor known the Pope's views more accurately, he would no doubt have changed his plans for a council, especially since the Pope favored a postponement till conditions would enable the Western bishops to attend.

Of the five legates whom the Pope appointed, Paschasinus bishop of Lilybaeum (now Marsala) in Sicily was designated by him to preside at the council in his name; the others were to assist him. He wrote letters to Marcian, to Anatolius patriarch of Constantinople, to his legates Paschasinus and Julian bishop of Cos, and to the council itself, instructing them that the decision of the council must be in conformity with the doctrine as set forth in his dogmatic letter. On the day appointed for the opening, many bishops had gathered at Nicaea. Dioscurus was there with seventeen suffragans. It seems certain that it was here that he on his own authority hurled a sentence of excommunication against Pope Leo. Then there was the usual crowd of monks from Constantinople and Syria, who always invited themselves to these Oriental councils. The Emperor's inability to be present delayed the opening. On the bishops' complaint of this delay, he requested them to come to Chalcedon, opposite Constantinople on the Bosporus, where the council was opened October 8. It was probably during this delay that Pulcheria ordered the governor of Bithynia, since many bishops had already arrived at Nicaea and she herself hoped to be there in person, to remove from the city those clerics, monks, and laymen who were neither summoned to the city by the court, nor brought there by their bishops, but who seemed to have come for no other purpose than to create disorder.

The exact number of bishops in attendance is not known with certainty. In a letter to the Pope the council speaks of 520,[3] while the Pope in a letter to the bishops of Gaul, speaks of about 600 brethren.[4] The figure com-

[3] Ballerini, *Opera S. Leonis I, epist.* CXVIII. *Versio antiquior,* 1100; *PL,* LIV, 959.
[4] *Epist.* CII; *PL,* LIV, 986.

monly accepted by historians, including the representatives, is 650, which makes it the largest of ancient councils, though even this figure must be regarded as approximate. With the exception of the papal legates and two African bishops, all of these belonged to the Eastern Church. The invasion of Western Europe by the Huns under Attila made the attendance of Latin bishops impossible. The number of sessions held is also a matter of uncertainty; scholars, however, are generally agreed on sixteen.[5] They were all held in the magnificent basilica of St. Euphemia outside the city.

At the opening of the first session, Paschasinus the president of the council protested against the place that Dioscurus had taken among the bishops in the council-chamber, declaring that he was on trial for heresy and for his criminal actions in the Robber Council, and hence was out of place in the ranks of those entitled to vote. Either he must be removed or the legates must depart. After some heated discussions, he was conducted by the imperial commissioners to a seat in the middle of the church, and immediately Eusebius of Dorylaeum arose to accuse him formally of heresy. This occasioned some violent scenes, for he was not without supporters. In the third session (October 13) he was deposed and at the conclusion of the council banished by the Emperor to Gangra in Paphlagonia, where he died three years later.[6] The fifth session (October 22) was devoted to the formulation of a symbol of faith. It was, therefore, one of the most important sessions in Christian antiquity. Most of the bishops were opposed to the drawing up of a new doctrinal formula; largely on the ground that such a step was in contravention of a decision of Ephesus.[7] They considered it sufficient to approve certain documents, the contents of which would be an expression of their own faith. This had been done in the second session, in which the following documents were publicly read and approved: the Nicene Creed, the Nicene-Constantinopolitan Creed,[8] the fourth letter of Cyril to Nestorius, the letter of Cyril to John of Antioch, and the dogmatic letter of Leo to Flavian. That was all that the Pope's legates demanded. But the Emperor insisted upon a formula by the reception or rejection of which he would be able to know who was orthodox and who was not. Therefore at the beginning of the fifth session there was read a doctrinal formula that had been drawn up the day before by a com-

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[5] Hefele-Leclercq, II, 649–58.

[6] In many manuscripts the second and third sessions are exchanged, that is, what we call the second is in reality the third, and vice versa. Besides other arguments in favor of such an exchange, it seems more logical to have what is now our third session follow the first. In the first session the council occupied itself with Dioscurus, and it seems but natural that it would conclude its consideration of him, that is, his deposition, in the second session and not postpone it to the third. Cf. Ballerini, II, 502, note.

[7] Denzinger, *Enchiridion* (1932), no. 125.

[8] This Creed is here for the first time ascribed to the Second General Council (381).

mission appointed for that purpose by Anatolius of Constantinople and approved by it. Most of the bishops accepted it. The papal legates, however, and a few bishops declared it ambiguous and therefore unsatisfactory. It did not embody Leo's definition as expressed in his dogmatic letter. The legates held out against the opposition, and finally declared that unless a formula were adopted in perfect agreement with the Pope's letter, they would return home, and a council would be held in the West. A new commission was appointed, which in the presence of the legates drew up another formula. This was accepted. After an introductory statement that the bishops present accepted the Creeds of Nicaea (325) and Constantinople (381) and the decisions of Ephesus (431), as well as the dogmatic letter of Leo, the document proceeds: "Following, therefore, the holy fathers, we all confess and teach with one accord, one and the same Son, our Lord Jesus Christ, perfect in His divinity and perfect in His humanity, true God and true man, having a rational soul and a body, consubstantial with the Father in His divinity and consubstantial with us in His humanity, like unto us in all things, sin alone excepted; in His divinity, begotten of the Father before all ages, in His humanity, born for us and for our salvation, in these last days, of the Virgin Mary, Mother of God; one and the same Christ, Son, Lord, Only-begotten, to be confessed in two natures, without confusion, without change, division, or separation, for the union does not destroy the distinction of the natures, but rather each retains its own being and characteristics and is united to the other in one person and hypostasis—not as though divided or separated into two persons, but one and the same Son, the Only-begotten, God the Word, the Lord Jesus Christ, as the Prophets of old (have spoken), and the Lord Jesus Christ Himself has taught us, and as the Creed of the fathers has handed down to us." [9]

The sixth session was attended in person by Marcian and Pulcheria, with all the imperial commissioners and senate. The doctrinal decree drawn up in the previous session was again read with the signatures of the bishops and approved. The Emperor amid joyful acclamations addressed the council, proposing the subject-matter for some disciplinary decrees. Its chief purpose being accomplished, the council devoted itself in the following sessions to the consideration of secondary matters, pertaining mostly to questions affecting individual bishops and their sees, that had been brought about by the decisions of the Robber Council or since then. In the fifteenth session it drew up and adopted twenty-eight canons dealing with matters of ecclesiastical discipline and jurisdiction. Of these only twenty-seven have been taken into the early Latin and Greek collections. At the beginning of this session the papal legates and also the imperial commissioners

[9] Denzinger, *Enchiridion*, no. 148.

left the council-chamber; the latter for reasons of their own, the former no doubt because they had been forewarned or had foreseen that the question of the hierarchical status of the bishop of Constantinople would be determined, as it actually was in canon 28, which decreed that, since Constantinople is the second city of the Empire, its bishop also should enjoy special prerogatives and be second in rank after the bishop of Rome. When the legates learned what had taken place during their absence, they called for another session on the following day, at which they protested against this canon, alleging that it militated against the sixth and seventh canons of Nicaea and was contrary to the instructions they had received from the Pope. Needless to say, their protests were without avail. The council inserted it in its acts, but because of the opposition it encountered from Rome it was excluded from all early collections of canons.

The council came to a close on November 1, three weeks from the time of its opening, but its dogmatic declarations did not terminate the controversy which it had been convoked to settle. The decision of Chalcedon has never been accepted by the entire East, with the result that a large proportion of its people are Monophysites to this day. The council did not write to the Pope for a confirmation of its acts. The signatures of the legates were considered as a sanction or papal confirmation. It did write to him, however, for a confirmation of the twenty-eighth canon. But naturally this confirmation was refused. During the second half of the year 452, erroneous and misleading reports went abroad in some provinces of the Eastern Empire, to the effect that the Pope had in certain letters repudiated the decrees of Chalcedon. These reports gave a powerful impulse to the Monophysite heresy. To counteract this, the Emperor, on February 15, 453, urged the Pope in a letter to put his confirmation of the doctrinal decree of Chalcedon in writing, so that it might be published in the churches and thus no longer leave any doubt as to his complete acceptance of it. In accordance with this request, the Pope without delay issued a circular letter, dated March 21, 453, addressed to all the bishops who had attended the council.[10] In the same letter he tells the bishops that the regulations of the fathers of Nicaea must remain unchanged, thereby repudiating the twenty-eighth canon.[11]

[10] For the letters of the Emperor and the Pope, cf. Ballerini, I, *epp.* CX et CXIV; *PL*, LIV, 1017–19, 1027–31.

[11] Mansi, VI–VII; Hardouin, II; Schwartz, *Acta conciliorum oecumen.*, Tome II: *Concilium universale Chalcedonense*, I, 1, 2, 3, and III, 1, Leipzig, 1933–35; Hefele-Leclercq, II, 634–857; Kirsch, *Die Kirche in d. antiken griechisch-röm. Kulturwelt*, pp. 559–72; Haase, "Dioskur v. Alexandria u. d. Konzil v. Chalcedon im Lichte d. monophysitischen Quellen," in *Sdralek's Kirchengeschl. Abhandl.*, VI (1908); *id.*, *Altchristl. Kirchengeschichte* (Leipzig, 1925), pp. 299–315; Schwartz, *Aus d. Akten d. Konzils v. Chalcedon: Abhandl. d. Bayr. Akad. d. Wiss., Phil.-hist. Klasse, XXXII*, 2, München,

CANON I

Text. **We have judged it right that the canons thus far enacted by the holy fathers in every council should remain in force.**

Comment. By this statement a certain measure of authority is accorded to the earlier canonical legislation in the East. For some time previous to 451 there had been in existence a *corpus* or collection of canons beginning with those of Nicaea and embodying all or nearly all that had been enacted by earlier and subsequent local synods up to a certain period.[12] The basis or nucleus of this collection was the canons of Ancyra (314) and Neocaesarea (315).[13] These constituted the earliest Greek collection, which goes back to the early part of the fourth century. At a later period, on account of their importance, the canons of the First General Council, Nicaea (325), were placed at the beginning of this collection, and those of the Synod of Gangra (*ca.* 340) were placed after the canons of Neocaesarea. At a later period again those of Antioch (341) were added. In this collection the canons were reckoned by an uninterrupted sequence of numbers. Thus we have the following arrangement:

1. Nicaea	canons	1–20
2. Ancyra	"	21–45
3. Neocaesarea	"	46–59
4. Gangra	"	60–79
5. Antioch	"	80–104

1925; *id.*, "Das Nicaeum u. d. Constantinopolitanum auf d. Synode v. Chalcedon," in *Zeitschr. f. neutestamentl. Wissenschaft*, XXV (1926), 38–88; Tixeront, *History of Dogmas*, III, 76–94; Otten, *Manual of the History of Dogmas*, I, 401–11; Duchesne, *Early History of the Christian Church*, III, 271–315; Batiffol, *Le Siège Apostolique* (Paris, 1924), pp. 493–589; Blötzer, "Der Hl. Stuhl u. d. ökumenischen Synoden d. Altertums," in *Zeitschr. f. kath. Theologie*, X (1886), 67–106; Fortescue, *The Lesser Eastern Churches* (London, 1913), pp. 163–81; The Letters of Pope Leo I in Migne, *PL*, Vol. LIV; Teetgen, *The Life and Times of the Empress Pulcheria*, London, 1907. For further literature, cf. Kirsch, *op. cit.*, 830 f.

[12] Unlike the essential principles of the constitution and government of the Church, ecclesiastical legislation was the product of a gradual growth. During the period of the persecutions, that is, up to the time of Constantine the Great, such legislation was necessarily very meager. In her discipline the Church was governed largely by tradition and custom, and whatever written laws existed were purely of a local and provincial character. Though a society of civilized members, from the viewpoint of law her position did not differ so much from that of primitive communities, where law as yet exists only in its rudimentary stages. Greater disciplinary uniformity existed, of course, between the Churches of the great metropolitan sees, Rome, Carthage, Alexandria, Antioch, and later Constantinople, and the Churches immediately dependent on them. Later the disciplinary decisions of bishops from various localities in synods assembled, formed the beginning of local canon law. These decisions were gathered together at various times by private persons and formed codes or collections, which gradually found their way from one country to another and became the nucleus or basis of general canon law.

[13] Maassen, *Gesch. d. Quellen u. Literatur d. can. Rechts* (Gratz, 1870), pp. 123 f.

These 104 canons constituted the ancient code of the Church up to the Council of Chalcedon. That they are the *corpus* that the fathers of the council had before them is indicated by the acts of the council, though our meager sources do not permit us to give a detailed description of its construction. For instance, in the fourth session (October 17) Aetius the archdeacon of Constantinople read the 4th and 5th canons of Antioch as canons 83 and 84 of the collection he had before him; [14] and in the eleventh session (October 29) the 16th and 17th of Antioch were read as canons 95 and 96.[15] To this collection were added later the canons of the Synod of Laodicea and those of Constantinople and Ephesus. Most of these were local or provincial councils whose authority was necessarily very restricted, and in the case of Antioch in some respects even doubtful. Their endorsement by a general council naturally added to them a broader obligation.[16]

CANON 2

Summary. Those who conferred ecclesiastical orders or positions for money, or received such orders or positions for money, as well as intermediaries in such transactions, shall be severely punished.

***Text.* If any bishop has conferred sacred orders for money and put to sale the grace that cannot be sold, and for money ordained a bishop, chorepiscopus,[17] priest, deacon, or any other cleric, or for**

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[14] Mansi, VII, 83.

[15] *Ibid.*, 282 f.

[16] Cicognani, *Canon Law* (Philadelphia, 1934), pp. 192–97. In any study of the ancient collections of canons, two works of prime importance are that of Maassen, referred to above, and the *Tractatus de antiquis collectionibus et collectoribus canonum* by the Ballerini brothers in the third volume of their edition of the works of Pope Leo I (Migne, *PL*, Vol. LVI).

[17] The chorepiscopi in the Eastern Church were rural or country bishops in episcopal orders having limited episcopal functions. The earliest mention we have of them is in the latter half of the second century. In the beginning, it seems, they were independent and exercised all or most of the episcopal functions in their respective districts, but from the second half of the third century they were subject to the bishops of the city. They could confer minor orders, which included the subdiaconate. The first conciliar references to them are those of Ancyra (314) and Neocaesarea (315). The former in canon 13 and Antioch (341) in canon 10 forbade them to ordain deacons and priests without the written consent of the bishop of the city to whom they were subject. The Synod of Sardica (343–44) in canon 6 decreed that no chorepiscopus should be consecrated for any village or unimportant town for the spiritual services of which a single priest is sufficient. In canon 57 the Synod of Laodicea (343–81) prescribed that chorepiscopi should be replaced by priests who have no fixed abode. We find a reference to them also in the second part of canon 8 of First Nicaea. St. Basil (d. 379) addressed two letters (53 and 54) to the chorepiscopi of his diocese, in the former of which he takes them to task for conferring orders for a pecuniary consideration, and in the latter reproves them for promoting persons to orders without any previous examination of their life and character. In the East the Second General Council of Nicaea (787) is the last

money, for the gratification of his own base greed, appointed a steward, advocate, sacristan or any other servant in the church, he shall, if convicted, imperil his rank; but the person so ordained or promoted shall gain nothing, but shall be deprived of the dignity or office thus obtained. Should anyone be proved to have been an intermediary in these disgraceful and unlawful transactions, he shall, if he be a cleric, be deposed from his rank; if a layman or monk, anathematized.

Comment. This canon is directed against simony and against kindred practices that had developed in regard to non-sacred offices connected with a church. From the nature of the case, the first three centuries of the Church were practically free from this offense. It was when persecutions ceased and a spirit of worldliness set in and bishoprics became objects of secular ambition, that the seed of the evil fell upon receptive soil. The rapid spread of Arianism was due in a large measure to corruption; but instances of such corruption occurred also within the Church. When over and above the ecclesiastical power, the bishops began to exercise also considerable civil power in the community, a power that increased rather than diminished with subsequent centuries, the way was opened for the worst kind of ecclesiastical venality and intrigue. The bishop was not only a spiritual ruler but also a civil magistrate of such importance that there was scarcely a municipal office that did not in some measure depend on him. And, as to his relations with the central government, both in the East and in the West the ancient Roman municipalities usually looked to him as the best representative of their interests. It is not surprising, then, that there should have been aspirants to the episcopal office who were actuated more by a love for honor and power than by any desire to enhance the interests of the Church, and who did not scruple to resort to bribery and pecuniary influences to obtain the object of their ambition. The life and times of Athanasius, Gregory of Nazianzus, Gregory the Great, and others are very illuminative of the inroads that simony had made into the ecclesiastical life of the first seven centuries. It was rife among the chorepiscopi of St. Basil's diocese. Antoninus bishop of Ephesus sold episcopal

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to make mention of them. They continued to exist there, however, till at least the ninth century. In the West they were little known before the seventh century and then they served merely as assistants to the bishops. They are first mentioned in canon 3 of the Synod of Riez (439). Owing to the influence they attained during the Carlovingian period, we find many synodal decrees directed against them. On their disappearance in the eleventh century, their place was taken by the archdeacons. Gillmann, *Das Institut d. Chorbischöfe im Orient*, München, 1903; Gottlob, "Der abendländische Chorepiskopat," in *Kanonist. Studien u. Texte*, Bonn, 1928; Leclercq, "La legislation conciliaire relative aux chorévêques," in Hefele-Leclercq, *Hist. des conciles*, II, 1197–1237, where ample literature is given.

ordinations at rates proportionate to the value of the sees concerned.[18] St. John Chrysostom in a synod presided over by him at Ephesus deposed six bishops who had obtained their sees simoniacally.[19] While still at Antioch, he complained that many had received the priesthood for money.[20]

The earliest legislation against simony, so far as we know, is canon 48 of the Spanish Synod of Elvira (*ca.* 305), though this canon as it stands seems to be a precaution against the evil rather than a condemnation of it. There are a few synodal decrees of a later date, but these seem to deal with it rather indirectly. Our canon is the first ecumenical condemnation of an evil that had been anathematized four hundred years earlier by St. Peter (Acts 8:20), and hence holds an important place in the history of the development of anti-simoniacal legislation.

Unlike all previous decrees, this canon of Chalcedon introduces two new classes of persons in connection with the evil: (1) Church officials whose office did not *per se* require sacred orders; (2) agents or intermediaries in simoniacal transactions.

The office of Church steward (οἰκονόμος) will be considered under canon 26, which deals specifically with that subject. The *defensor* (ἔκδικος) was an official advocate or counsel whose chief duty it was under given circumstances to represent and defend in the secular courts and before the emperor the rights and possessions of the particular church for which he was appointed and also the civil rights and affairs of the ecclesiastics connected with that church. His prototypes were the civil or municipal *defensores,* who were appointed especially to protect the poor and weak against the encroachments of the rich and the arrogance of the fiscal agents. The legal force of the term is expressed by a law of Valentinian I, *Nec idem in eodem negotio defensor sit et quaesitor.* About the year 400, the bishops of Africa called for *defensores* to protect the poor against the oppression of the rich.[21] Gregory the Great speaks of them as protectors of the poor,[22] of the injured,[23] of Church property,[24] and as agents of the pope to enforce discipline.[25] In the East the advocates were always ecclesiastics. At the Synod of Constantinople in 448, presided over by St. Flavian, John, priest and advocate of the Church of that city, was em-

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[18] Baur, *Der hl. Joh. Chrysostomus u. seine Zeit,* II (München, 1930), 119–26.
[19] *Ibid.,* 126–31.
[20] *De Virginitate,* 24.
[21] Mansi, III, 778, 970.
[22] *Epist.* V, 29.
[23] *Epist.* X, 53.
[24] *Epist.* IX, 18.
[25] *Epist.* X, 1.

ployed to summon the heretic Eutyches.[26] The Council of Chalcedon charged the advocate of the Church of Constantinople to expel the monks and clerics who were wandering about in that city and stirring up trouble (cf. canon 23). In the West the office was held by laymen chosen from the legal profession, till Gregory the Great established the custom of appointing ecclesiastics to the post. Whether this custom gained general acceptance in the West, is not clear. At any rate, during the Middle Ages we find the office again held by laymen, generally of noble birth, especially in Western Europe. Flagrant abuses became connected with it, and in the ninth century conciliar decrees were issued to protect Churches and ecclesiastical institutions against the high-handed claims of their advocates, who in more ways than one had become an intolerable burden to their clients. Because of the advantages it offered both in the East and in the West, the office was eagerly sought after, and it was the abuse connected with its attainment that our canon condemns.

The next office, *prosmonarios* (προσμονάριος), offers considerable difficulty, much of which is created by the word itself. Opinions differ as to the precise function or functions implied. Some commentators (Justel, Bingham, Beveridge, and others) write *paramonarios;* while the *Interpretatio Dionysii* has in parentheses, *vel mansionarium*, which was adopted by Gratian [27] and seems to have obtained general currency for a time in the West. According to some writers, he was an administrator of Church property; but others claim for him the duties of a sexton. In the time of Gregory the Great he was a sacristan, whose duty it was to light the candles in the church.[28] The *Prisca* or *Itala* Version makes him *ostiarius* (porter), which in Western Europe was the lowest grade of the minor clergy and which at that time, at least in Rome, seems to have implied practically the same idea as sacristan. According to Duchesne, the *ostiarii* were superseded at an early date at Rome by the *mansionarii*, a kind of sacristan not in orders, who appear as early as the sixth century.[29] "In Rome itself," says Dr. Kirsch, "this office (*ostiarius*) attained to no particular development, as a large part of these duties, namely, the actual work necessary in the church building, what is now probably the duty of the sexton, was at Rome performed by the *mansionarii*.[30] There seems to be doubt that in some details the duties of the *mansionarius* varied with time and place, and this may be said to have been true also of the *prosmonarios* in the Eastern Church. In

[26] Mansi, VI, 698.
[27] C.8, C.I, q.1.
[28] *Dial.*, I, 5.
[29] *Christian Worship: Its Origin and Evolution* (London, 1919), p. 347.
[30] Art. "Porter" in *Cath. Encyclopedia.*

conclusion the canon deals with those persons who act as agents or intermediaries in the purchase and sale of ecclesiastical offices. The same punishment is prescribed for monks and members of the laity, because in those days monks were as a rule laymen.[31]

CANON 3

Summary. No bishop, cleric, or monk shall engage in secular traffic or business, except in the interests of minors, orphans, or other needy persons.

Text. **It has come to the knowledge of the holy council that some members of the clergy for sordid gain become tenants of the estates of others and engage in secular occupations, neglecting the service of God, insinuating themselves into the houses of the people of the world, and from covetous motives undertake the administration of their property. The holy and great council has decreed, therefore, that in the future no bishop, cleric, or monk shall be engaged in farming estates or in business, or undertake secular administrations, unless he be summoned by law to assume the guardianship of minors and cannot escape that charge, or the bishop of the city should commission him, because of the fear of the Lord, to manage ecclesiastical affairs, or the affairs of orphans and widows not otherwise provided for, and of such persons as especially need the aid of the Church. If anyone in the future transgresses this ordinance, he shall undergo the ecclesiastical penalties.**

Comment. The practice of bishops and other clerics to engage from motives of greed in various forms of secular occupation, had become widespread long before the time of our council. It was one of the demoralizing results of that long peace enjoyed by the Church, a peace which ended with the fiery ordeal of the Decian persecution. Many had embraced the Christian religion and entered the ranks of its ministry from motives that were at variance with its requirements. They intended not to be molded by it, but rather to use it as a means of worldly aggrandizement and influence. They engaged in secular occupation for the sake of the gain it brought them. The predominating disposition of such proselytes often insensibly induced other ministers of the Church to follow their example. The *locus classicus* in connection with that abuse is furnished by St. Cyprian when he says: "Many bishops who ought to give encouragement and example to the rest, disdaining their sacred trust, devote themselves to secular business, abandon their Churches, desert their people, and wander up and down through foreign provinces scanning the markets for

[31] On simony in the early Church, cf. Weber, *A History of Simony in the Christian Church*, Baltimore, 1909. For a canonical study of simony, Leinz, *Die Simonie*, Freiburg i. Br., 1902.

profitable merchandise (*per alienas provincias oberrantes negotiationis quaestuosae nundinas aucupari*); while their brethren in the Church hunger, they covet money in abundance, seizing lands by deceit and fraudulent practices and increasing their capital by compound interest (*usuris multiplicantibus faenus augere*)." [32] St. Jerome, giving advice to a young cleric, says: "A clergyman who engages in secular occupation and who rises from poverty to wealth, from obscurity to high position, avoid as you would a pest. It is the glory of a bishop to provide for the wants of the poor, but it is the shame of all priests to accumulate great wealth." [33]

The abuse had been met by a series of synodal decrees, but seemingly with little effect. Thus the Synod of Carthage in 397 forbade all clerics to be *conductores* or *procuratores* of secular affairs, or to make their living *ullo turpi vel inhonesto negotio*, but to bear in mind the words of the Apostle: "No man, being a soldier to God, entangleth himself with secular business." [34] At the beginning of the fourth century the Synod of Elvira in canon 19 forbade clerics to leave their places *negotiandi causa*, or to wander around in the provinces seeking gainful markets.[35] Then the Synod of Arles (443 or 452) in canon 14, forbidding a cleric to engage in secular business, specifies the penalty, *depositus a clero a communione alienus fiat.*[36]

The canon of Chalcedon is almost a word for word repetition of the second of those proposed by the Emperor in the sixth session, with the addition: that a cleric may assume the guardianship of minors or orphans and the care of widows only (1) when he cannot lawfully escape that charge, or (2) if he is commissioned by his bishop. However, the bishop may commission him only in case these orphans and widows are not otherwise provided for. With these two exceptions, the following of secular pursuits by clerics is forbidden. This, however, must not be understood to mean that clerics were not permitted to work at a trade, either for their own maintenance, when Church funds proved insufficient, or to meet a larger demand of charity. In the early days of the Church the offerings of the faithful were not sufficient to maintain their clergy, and, following the example of St. Paul, many were compelled to work with their own hands. It is to be noted that our canon, or for that matter any other canon dealing with this subject, does not condemn secular occupation *per se*, so long as it does not interfere with the ministerial duties of the cleric; what it does condemn is the secularity of the motive back of the occupation.

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[32] *De lapsis*, 6; ed. Hartel.
[33] *Epist. LII, ad Nepotianum*, 5, 6.
[34] Mansi, III, 883, c. 15.
[35] Hefele-Leclercq, *op. cit.*, I, 232.
[36] *Id.*, II, 466.

As a matter of fact, some African synodal decrees even suggest that a cleric work at some trade, provided it can be done *absque officii sui detrimento.*

Monks, though most of them were laymen, were not exempt from this prohibition, because to hire out for gain, for the sole sake of gain, is inconsistent with the fundamental principles of the monastic life. St. Jerome speaks of some who had become richer as monks than they had been in the world.

CANON 4

Summary. Monks are forbidden to roam about from city to city, to erect a monastery or an oratory without the permission of the proper bishop, to receive into the monastery a slave without his master's permission. They are recommended to a life of retirement, mortification, and prayer.

Text. **Those who lead a true and sincere monastic life ought to enjoy due honor. Since, however, there are some who, using the monastic state as a pretext, disturb the churches and the affairs of the state, roam about aimlessly in the cities, and even undertake to establish monasteries for themselves, it is decided that no one shall build or found a monastery or a house of prayer without the consent of the bishop of the city. It is decided furthermore, that all monks in every city and country place shall be subject to the bishop, that they love silence and attend only to fasting and prayer, remaining in the places in which they renounced the world; that they shall not leave their monasteries and burden themselves either with ecclesiastical or worldly affairs or take part in them unless they are commissioned to do so for some necessary purpose by the bishop of the city; that no slave shall be received into the monasteries and become a monk without the consent of his master. Whosoever transgresses this decision of ours shall be excommunicated, in order that the name of God be not blasphemed. The bishop of the city, moreover, shall exercise a strict supervision over the monasteries.**

Comment. Except for a few slight changes, this canon, like the foregoing one, is almost a verbatim repetition of the first of those proposed by Marcian. It was directed against that host of disorderly and fanatical Eastern monks who arrogated to themselves the prerogative of interfering in civil and ecclesiastical affairs and who were more fervent than discriminating in their orthodoxy. In 431 Theodosius ordered Candidianus, the royal commissioner, to expel from Ephesus all the monks who had gathered in that city for no other purpose than to watch the council. Probably occasion for our canon was given by the archimandrite Barsumas and his Monophysitizing monks of Syria. They had withdrawn from the juris-

diction of their bishops and had become staunch adherents of the Cyrillian party, which, misinterpreting St. Cyril, maintained but one nature in Christ and regarded as Nestorians all who disagreed with them. At the Robber Council of Ephesus, Dioscurus was supported not only by military force but also by more than a thousand illiterate monks under the leadership of Barsumas. The disgraceful part they played in that council is well known. On its termination Barsumas and his monks overran Syria and on October 17, 451, he appeared with his followers at Chalcedon during the fourth session of the council. He was declared by the bishops to be the murderer of Flavian patriarch of Constantinople, and the perverter of Syria, and was ejected from the council-chamber by the royal soldiers. The restrictions of this canon did not, however, moderate the irrepressible and misdirected zeal of the Eastern monks. The Acoemetae, too, though they always stood for orthodoxy, took a prominent part in the Christological controversies raised by Nestorius and Eutyches and later in the controversies of the Icon.

It was decided furthermore, that no monastery was to be erected without episcopal sanction and that all monks were to be subject to the ordinary. This part of the canon is important for the history of monastic exemptions. Both in the East and in the West, canonical legislation tended to emphasize episcopal privileges and authority. The Synod of Agde (506) in canon 27 forbade the erection of a monastery without the consent of the bishop of the diocese, and the Synod of Orleans (511) in canon 19 declared that monks shall be subject to their abbots, and the abbots subject to the authority of the bishop. However, notwithstanding the multiplication of conciliar decisions along this line, the monasteries succeeded gradually in freeing themselves from the authority of the bishop. In consequence of episcopal oppression, a reaction set in which was encouraged by Pope Gregory the Great, the first monk to become pope; by the Fourth Synod of Toledo (633) in canon 51, which accused the bishops of looking upon monks as slaves and regarding their monasteries as episcopal property; by the English Synod of Hereford (673) in canon 3 and others. Monasteries were taken under protection by the popes, and this practice developed later into exemption from episcopal authority.[87] The first instance of such complete exemption from the authority of the diocesan ordinary was the old Irish monastery of Bobbio, in upper Italy, which in 628 was placed by Pope Honorius I directly under the protection and

[87] Blumenstok, *Der päpstl. Schutz im Mittelalter*, Innsbruck, 1890; Weiss, *Die kirchl. Exemtion d. Klöster bis z. gregor.-clun. Zeit*, Basle, 1893; Schreiber, *Kurie u. Kloster im 12. Jahrh.*, Stuttgart, 1910. Hüfner, *Das Rechtsinstitut d. klösterl. Exemtion in d. abendländischen Kirche*, Mainz, 1907; Sägmüller, *Lehrbuch d. kath. Kirchenrechts*, I (Freiburg i. Br., 1930), 322–29.

authority of the Holy See.[38] From the twelfth century exemption of orders and monasteries became the rule. The legislation consequent upon this reaction inaugurated a system of monastic exemptions of which Monte Cassino, St. Martin's of Tours, Einsiedeln, Fulda, St. Augustine's of Canterbury, Westminster Abbey, St. Alban's, and others are outstanding examples.[39]

When, finally, our canon forbids monasteries to admit slaves with a view to their becoming monks without the consent of their master, its primary aim was to strike at a long-standing evil. Often slaves used to flee from their master and take refuge in a monastery with a plea to become monks. This they did, not out of any sincere love for the monastic state but rather to exchange a life of hardship and painful servitude for one of ease and indolence, dispositions that not infrequently bred those disorderly and anarchical tendencies that caused so much disturbance in the affairs of both Church and state in the East. The restriction, moreover, was based on the principle that no one who has a right to property should, *ipso invito*, be deprived of it. The Roman law dealt very severely not only with fugitive slaves but also with those who received them.

CANON 5

Summary. Clerics who go from city to city shall be subject to the canon law.

***Text*. In regard to the bishops and clerics who pass from one city to another, it is decreed that the canons enacted by the holy fathers shall have their proper force.**

Comment. This canon is a summary of one proposed by Marcian. Bishops and clerics are forbidden to leave the Church for which they were ordained and pass over to one in another city, in violation of the rule, *Ubi quisque ordinatur, ibi permaneat*. Decrees previously enacted on the same subject are: Council of Nicaea, canons 15, 16; Synod of Arles, canons 2, 21; of Antioch, canons 3, 21; of Sardica, canon 1. The canon was subsequently often renewed. Thus in the *Dialogus Ecclesiasticae Institutionis* attributed to Egbert archbishop of York (d. 766), sixth *responsio*, we read: *Desertorem vero propriae ecclesiae interdictum habemus in alia ministrare; ministrantem vero taliter a suo submoveri officio, donec reconcilietur ecclesiae suae*.[40] The Synod of Chelsea (787), speaking in canon 6 of

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[38] Shahan, "An Old Irish Monastery in the Apennines," in *Am. Catholic Quarterly Review*, XXVI (1901), 436–52.

[39] On the monastic life anterior to the Council of Chalcedon, cf. Schiwietz, *Das morgenländische Mönchtum*, 2 vols., Mainz, 1904–13; Besse, *Les moines d'Orient antérieurs au Concile de Chalcedoine*, Paris, 1900; Marin, *Les moines de Constantinople depuis la fondation de la ville jusqu'à la mort de Photius (330–898)*, Paris, 1897.

[40] *Councils and eccl. Documents relating to Great Britain and Ireland*, III (ed. Hadden and Stubbs, Oxford, 1871), 406.

the ordination of priests and deacons, adds: *et in illo titulo perseverent ad quem consecrati sunt, ita ut nullus de alterius titulo presbyterum aut diaconum suscipere praesumat, absque causa rationabili et literis commendatitiis.*[41] However, already early in the fourth century the Church found it necessary to make exceptions to this rule, and within the same century exceptions had multiplied exceedingly. Perhaps it was the unnecessary increase of such exceptions that induced the council to renew this ordinance.

CANON 6

Summary. No one is to be elevated to an ecclesiastical order without a title. Orders so conferred are invalid.

Text. No one is to be promoted to the priesthood or diaconate or to any other ecclesiastical order, unless the one to be promoted is specially affiliated to a church of a city or village, or a martyry or monastery. In regard to those who have been ordained absolutely, the holy council decided that such ordination is invalid, and that they can function nowhere to the disgrace of the one who ordained them.

Comment. This canon forbids ordination without a title, that is, something which guarantees a cleric an honorable subsistence. In the early Church and for a long time after our council, the law prohibited the ordination of anyone even to minor orders who had not some definite ecclesiastical charge in a church assuring him of a respectable living. The church for which he was ordained was called the *titulus ordinationis*, and the candidate himself was said to be *intitulatus.* Later it became customary to confer not only tonsure and minor orders but also the major orders without a title. Those so ordained were known as *clerici vagi* or *acephali.* To put an end to this practice, Alexander III in the Third Lateran Council (canon 5) compelled bishops who should ordain priests and deacons without a title to provide from their own episcopal funds a suitable maintenance for such clerics, should they be in want, till they have received a title that will assure them a respectable subsistence. Innocent III extended this discipline to subdeacons,[42] and since then the *titulus ordinationis* is required only for the major orders. The Council of Trent recognized three such titles: a benefice, a patrimony, and a fixed income or pension.[43] The only title recognized by Chalcedon in this canon is the one known later as *titulus bene-*

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[41] *Ibid.*, 451.

[42] C. 16, X, De praeb., III, 5. Heckel, *Die Verordnung Innozenz' III über d. absolute Ordination u. die Forma* "Cum secundum apostolum," in *Hist. Jahrb d. Görres-Gesellschaft*, LV (1935), 277–304.

[43] *Sess. XXI, c.2 de ref.*

ficii, which connotes an assignment to a church in a city, or to one in a village, or to a martyry, or as cleric in a monastery. The word martyry (μαρτύριον) means a church, or more properly a chapel, built over a martyr's grave. In the West such chapels were called *memoriae martyrum*.

The council declared absolute ordinations, that is, *sine titulo*, invalid. Though it used the word ἄκυρος (null, void), it is very probable that it had in mind "void of effect" through permanent suspension.[44] The Council of Trent in renewing the prohibition made explicit reference to this canon of Chalcedon.[45]

CANON 7

Summary. A cleric or monk who enters the military service or accepts a secular dignity and does not repent, shall be anathematized.

***Text*. We have decreed that those who have once been numbered among the clergy or have chosen the monastic state, shall not enter the military service or accept any secular dignity. Those who dare act thus and do not so repent that they return to the vocation they once chose for God's sake, shall be anathematized.**

Comment. According to the Greek commentators Balsamon and Zonaras, this canon was directed against such clerics and monks as had actually abandoned their religious vocation and laid aside their religious garb for the sake of a secular career. Somewhat similar ordinances are contained in Apostolic canons 81 and 83 (*alias* 80, 82), with this difference, that these have in view clerics who combine ecclesiastical and secular functions, and threaten them merely with deposition, while our canon considers the case of those who actually lay aside the clerical office to engage in military service, and threatens them with excommunication, the severest ecclesiastical penalty. Ordinarily an offense which in the case of clerics carried with it only deposition, in the case of laymen was punished with excommunication (cf. canon 8, *infra*). Evidently our canon regards clerics who abandon their religious vocation to engage in military and other secular service as becoming *eo ipso* laicized and in the infliction of penalty treats them as laymen. Such desertion was regarded with disfavor even by the civil authorities, and the deserter was liable to severe punishment. This canon was renewed some years later by the synods of Angers (453) in canon 7 and Tours (461) in canon 5.[46]

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[44] Cf. I Nicaea, note 106. Kober, *Suspension* (Tübingen, 1862), 219 f.

[45] *Sess. XXIII, c. 16 de ref.* Fuchs, *Der Ordinationstitel v. seiner Entstehung bis auf Innozenz III*, Bonn, 1930.

[46] Mansi, VII, 901, 945.

CANON 8

Summary. Clerics in poorhouses, monasteries, etc., shall remain under the jurisdiction of their respective bishops. Those who rebel shall be penalized.

Text. Clerics of poorhouses, monasteries, and oratories shall remain under the jurisdiction of their respective bishop in each city, in accordance with the tradition of the holy fathers, and shall not indulge in self-will or rebel against their bishop. Those who dare in any manner transgress this ordinance and refuse submission to their bishop, are, if clerics, to incur canonical censure (deposition), if monks or laymen, to be excommunicated.

Comment. The word πτωχεῖον in the text means poorhouse in a somewhat broader sense than the term is understood today. It brings to mind the charitable institution established about 369 by St. Basil in the suburbs of Caesarea. It provided for the care of the poor, of friendless strangers, the sick, especially lepers, and for the education and training of the blind. Sozomen called it the most celebrated hospice for the poor; [47] and Gregory of Nazianzus characterized it as a home of piety, where disease is borne philosophically, misfortune deemed a blessing, and sympathy tested.[48] It was the mother house of similar institutions established in other dioceses. Bassianus bishop of Ephesus (444–48) erected in that city a poorhouse with seventy beds for the sick and poor,[49] and several such institutions existed in Egypt.[50]

The clerics referred to in the canon are those who were entrusted with the spiritual ministrations of houses for the sick and poor, monasteries, and oratories.[51] Following the tradition of the holy fathers, the council rejected any claim on the part of such clerics to be exempt from the jurisdiction of their ordinaries. The tradition here referred to is that constant care and solicitude which the Church has exercised in behalf of the poor and afflicted from the times of the Apostles. The bishop was the administrator of Church property and the director of poor-relief. He was assisted by the deacons and deaconesses, who were accountable to him alone. The responsibility of the bishop in this matter is inherent in the nature of his office, and it is but natural that those appointed by him to attend to the spiritual and temporal needs of charitable institutions should be subject

[47] *Hist. eccl.*, VI, 34.
[48] *Oratio* XLIII, 63. Cf. also St. Basil, *epist.* XCIV.
[49] Mansi, VII, 277; Hefele-Leclercq, II, 756.
[50] Mansi, VI, 1013. On such institutions in general during the first eight centuries, cf. Thomassin, *Vetus et nova ecclesiae disciplina* I, lib. II, cap. 89.
[51] On oratories, cf. Thomassin, *op. cit.*, I, lib. II, cc. 92–94.

to his jurisdiction. The allusion to laics in the canon points to laymen as administrators of such institutions.

CANON 9

Summary. Disputes among the clergy must be settled before their bishops, the synod of the province, the exarch, or the bishop of Constantinople, and not in secular tribunals.

Text. **If any cleric has a cause against another cleric, he shall not disregard his bishop and run to secular tribunals, but he shall first lay the case before his bishop, or, with the consent of the bishop, before persons by whom both parties shall agree to have the rights of the case adjudicated. If anyone act contrary to this ordinance, he shall incur canonical censure. If a cleric has a cause against his own or some other bishop, it is to be decided by the synod of the province. But if a bishop or a cleric has a cause against the metropolitan of the province, he is to take his case either to the exarch of the diocese or to the see of Constantinople, and have it settled there.**

Comment. Following the injunction of St. Paul (I Cor. 6:1–7), the early Christians as a rule referred the settlement of disputes among themselves to the bishop. It was thought unbecoming that a Christian should cite his fellow-Christian before a heathen tribunal. Constantine the Great not only recognized this practice but also enacted a law whereby he permitted litigants among the laity to take their disputes before the bishop, if they preferred to do so, and decreed that all cases, once settled before his court, be considered as finally adjudicated.[52] Later, when the Christians gained control of the civil power, especially in Rome, there was no longer any reason to adhere to the command of the Apostle, and the Church gradually permitted them to take their differences either to ecclesiastical or to civil tribunals. Honorius placed the episcopal decision on a par with that of a praetorian prefect, from which all appeal was excluded. In a law of 452, Valentinian III insisted that both parties must agree to accept the bishop as arbiter.[53] To St. Augustine the burden of the office was a heavy one, and he expresses his impatience with the importunity of those who, inspired by selfishness, force their disputes upon his time.[54]

This canon concerns itself with recourse by ecclesiastics to secular tribunals, which the Church regarded as a transgression. It includes disputes of both a religious and non-religious or civil character. It is true that the civil causes of clerics pertained to the secular court as much as did the civil causes of the laity, yet to the Church it seemed inconsistent with the

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52 Sozomen, I, 9.

53 Hefele-Leclercq, II, 791 note; Sägmüller, *Lehrbuch d. kath. Kirchenrechts*, I, 339 ff.

54 *Enarr. in Psalm.* CXVIII, 24, 3; *PL*, XXXVII, 1669.

dignity of the clerical state that the leaders and teachers of the faithful should be judged by laymen. The Third Synod of Carthage (397) forbade clerics, whether engaged in ecclesiastical or civil suits, to take the matter before a public tribunal.[55] In 376 Gratian decreed that all causes relating to matters of religion are to be assigned to ecclesiastical tribunals, but reserved to secular tribunals criminal charges against clerics.[56] Honorius in 399 declared that *quotiens de religione agitur, episcopos convenit judicare; caeteras vero causas quae ad . . . usum publici juris pertinent, legibus oportet audiri.*[57] Somewhat later the same Emperor enacted: *Clericos non nisi apud episcopos accusari convenit.*[58]

The council in this canon makes provision for carrying on ecclesiastical litigation between (a) two clerics, (b) a cleric and his own or another bishop, and (c) a cleric, or a bishop, and the metropolitan. As to the first, the prohibition is not absolute or exclusive. That is clear from its use of the word *πρότερον* (*prius*). If a cleric has a cause against another cleric, whether it be of an ecclesiastical or civil nature, he is to place the matter *first* before his own bishop, and failing to obtain a satisfactory decision, he may, with the approval of his bishop, seek its settlement at the hands of another party acceptable to both. Along the same line Justinian later enacted the following law: "If anyone (that is, laic or cleric) has a cause against a cleric or a monk or a deaconess or a nun or an ascetic, he shall first take the matter to the bishop of his opponent, and he shall decide. If both are satisfied with his decision, it shall then be put into effect by the imperial judge of the locality. If, however, one of the contending parties within ten days lodges an appeal against the decision of the bishop, then the imperial judge of the locality shall decide the matter." [59] The Apostolic Constitutions direct the bishop to settle disputes privately. Should this method fail, then he is to take cognizance of them on Mondays, so that there will be ample time for reconciliation before the following Sunday. In this he is to be assisted by the priests and deacons, and after hearing both sides he is to pronounce judgment.[60] The synods of Agde (506) in canon 32 and Epaon (517) in canon 11 strictly forbade clerics to bring suit against anyone before the secular tribunal without the permission of the bishop; but if prosecuted in such a court, they were permitted to proceed there.[61] The Synod of Orleans (538) in canon 32 forbade clerics and laymen to bring suits against each other in a civil court without the consent of

[55] C. 43. C. XI, q. 1.
[56] *Cod. Theod.*, XVI, 2, 23.
[57] *Ibid.*, XVI, 16, 111.
[58] *Ibid.*, XVI, 2, 41.
[59] *Novella* CXXIII, c. 21.
[60] Lib. II, cc. 37, 45, 47.
[61] Mansi, VIII, 330, 559.

the bishop,[62] and that of Macon (581) in canon 8 absolutely forbade a cleric to bring another cleric before a civil tribunal.[63] In virtue of synodal decrees, then, in the Roman Empire a cleric could in civil causes cite another cleric only before the bishop. The bishop, on the other hand, could be cited only before a provincial synod. These decrees, however, received but slight, if any, recognition from the secular tribunals, until Justinian in 546 assigned to the ecclesiastical forum all disputes between clerics and complaints of laymen against clerics.[64] It may be added that in the Roman Empire in criminal causes the bishop had no jurisdiction except in matters of a trivial nature. To him belonged only the deposition of the criminal cleric before punishment was imposed by the civil judge.[65]

In case the dispute is between a cleric and his own or another bishop, the matter is to be taken before a provincial synod, over which the metropolitan would preside (cf. Nicaea, canon 5).

If the matter in dispute is between a cleric or a bishop and the metropolitan of the province, the complainant may take his case either to the exarch of the diocese or to the see of Constantinople. In a civil sense, an exarch was the governor of any large and important province. Ecclesiastically, and in point of authority, he was at first on a level with the metropolitans of Alexandria and Antioch, possessing jurisdiction not only over his own province but also over the provinces of other metropolitans. In the West he was known as primate, which official, however, corresponded not to the patriarchs, but to the exarchs of the East. In the eastern portion of Christendom an exarch is a bishop who holds a place between that of patriarch and that of ordinary metropolitan. He is independent of the patriarchs.[66] Thus, at the Council of Ephesus (431) the Church of Cyprus was declared autocephalous, and since then its archbishop has been known as exarch. In the present canon the patriarchs are called exarchs, and the meaning therefore is: the complainant may take his case either to the exarch or patriarch of his diocese or to the see of Constantinople.[67]

In proposing this alternative, the council officially recognized the σύνοδος ἐνδημοῦσα, "Home Synod," existing in that city and bestowed upon its

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[62] Mansi, IX, 19.

[63] *Ibid.*, 923.

[64] Grashof, "Die Anerkennung des privileg. Gerichtsstandes d. Klerus durch die röm. Kaiser," in *Archive f. kath. Kirchenrecht* XXXVIII (1876), 3–29; Lardé, *Le tribunal du clerc dans l'Empire romain et la Gaule franque*, 1920; Fessler, *Der kanonische Process in d. vorjustinianischen Periode*, Wien, 1860.

[65] Sägmüller, p. 341.

[66] Fortescue, *The Orthodox Eastern Church*, pp. 21–25; Silbernagl, *Verfassung u. gegenwärtiger Bestand sämtlicher Kirchen d. Orients*, Regensburg, 1904; Milasch, *Das Kirchenrecht d. morgenländischen Kirche*, Moster, 1905.

[67] The words "patriarch" and "exarch" were sometimes used synonymously. Thus, Evagrius, *Hist. eccl.*, IV, 11. Ibas bishop of Edessa, in his trial in 448, called John of Antioch his exarch. Mansi, VII, 237.

bishop the privilege and distinction of judging the cases of clerics and bishops against metropolitans who belonged to dioceses other than his own and over whom he had no jurisdiction. The origin of the "Home Synod" was this: there had always been in Constantinople many bishops who came there on matters connected with their Churches or to lay their disputes before the emperor. The settlement of these the emperor often referred to the bishop, who then called together the bishops present in the city and decided the matter. These meetings under the presidency of the bishop of Constantinople assumed, however irregularly, the character of a synod. It was in such a synod held in 448 and presided over by St. Flavian that Eutyches was for the first time condemned. What the council had thus done for Constantinople was more than had ever been done for Rome. Canons 3, 4, and 5 of Sardica gave to the bishop of Rome only the right to appoint new judges. It is true, Chalcedon in drawing up this canon had in mind only the Eastern Church, but it can hardly be denied that in doing so it was swayed by an anti-Western feeling, or at least by a desire to exalt the ecclesiastical status of the Constantinopolitan see.

CANON 10

Summary. Ecclesiastics are forbidden to be enrolled on the clergy list of different cities at the same time. They are to officiate in that Church only for which they were ordained, or be deposed.

Text. It is not permitted to a cleric to be enrolled (on the clerical registers) in the Churches of two cities at the same time, in that, namely, for which he was originally ordained and in that to which he has betaken himself, presumably as being greater, from a desire of vain glory. Those who act thus are to be returned to the Church for which they were originally ordained, and officiate there only. If, however, anyone has been removed from one Church to another, he shall take no further part in the affairs of his former Church, or of the oratories, poorhouses, or hospices dependent on it. Whoever dares, after the publication of this ordinance of this great and ecumenical council, do anything now forbidden, shall be deposed.

Comment. This canon forbids clerical pluralities resulting from clerical migration. The practice was later outlawed by Justinian. Regarding the migration of a bishop from his own city to another from motives of avarice and ambition, see canon 5 of this series, canon 15 of Nicaea, and canon 1 of Sardica. After renewing the provision of Nicaea, that a cleric who had thus migrated must be returned to the Church for which he was originally ordained, the council takes up the case in which the removal resulted from the action of authority.

CANON 11

Summary. Christians needing help when traveling are to be provided with letters of peace only.

Text. All the poor and those in need of help when traveling shall after an examination be provided with ecclesiastical letters of peace only and not with commendatory letters, because commendatory letters ought to be granted to those persons only who are in high estimation (open to suspicion).

Comment. From the earliest days traveling Christians were provided with letters of introduction certifying to their status and claims and securing them admission to communion and social intercourse in the cities they intended to visit. St. Paul makes mention of them in II Cor. 3:1. Evidence of the great influence they exercised in binding the Christians together is furnished us by the fact that Julian the Apostate made an attempt to introduce something similar among the pagans of his Empire. By means of these letters, Christians on a journey would find hospitality, care, and help if they needed it in any part of the world. The fact that the letters of introduction of the schismatical Donatists were good only among themselves, probably justifies the conclusion that they were used also, at least to some extent, among the heretics. Precaution was necessary in the admission to communion of Christians who had come in the course of travel or by change of home into a strange community or city. It was through the absence of due precautions that not only the hospitality and generosity of individual Christians had often been preyed upon and grossly abused, but the Church also had been not infrequently deceived by the false pretensions of unknown strangers.

The canon distinguishes two classes of testimonial letters to be given to Christians traveling abroad. One simply attested that the bearer is a member of the Church and deserving of charitable aid. These appear to have been of an eleemosynary character and were called "letters of peace," and ordinary Christians going abroad, especially those in need of help, were to be provided with these only. The Synod of Antioch (341) in canon 7 forbade the reception of any stranger who was not provided with such an instrument. There seems to have been no uniformity in the issuance of introductory letters. Instead of letters of peace, ordinary Christians were often granted commendatory letters, namely, such as were reserved for clerics and distinguished lay persons. Thus in the second book (chapter 58) of the Apostolic Constitutions we have the instruction: "If any brother, man or woman, come in from another parish bringing commendatory letters, let the deacon be the judge of that affair, inquiring whether

they be of the faithful and of the Church; whether they be not defiled by heresy, and besides, whether the party be a married woman or a widow. And when he is satisfied in these questions, that they are really of the faithful and of the same sentiments in the things of the Lord, let him conduct everyone to the place proper to him. And if a priest comes from another parish, let him be received to communion by the priests; if a deacon, by the deacons; if a bishop, let him sit with the bishop and be allowed the same honor with him." For the reception of anyone without such letters, the 13th (12th) of the Apostolic canons specifies the penalty: "If any cleric or laic who is suspended, or ought not to be received, goes away and is received in another city without commendatory letters, both he that received him and he that was received shall be suspended. But if he be already suspended, his suspension shall be lengthened, as lying to and deceiving the Church of God."

Letters of the other class were known as *literae commendatitiae*, or "commendatory letters," and were granted to clerics and persons of high or exceptional rank (τοῖς οὖσιν ἐν ὑπολήψει . . . προσώποις).[68] The Greek commentators Balsamon, Zonaras, and Aristemus translated this phrase thus: "persons open to suspicion," and understood this canon to mean that commendatory letters are to be given to those clerics and laics who had once been under ecclesiastical censure and whose character had been or was open to suspicion.[69] The interpretation, however, that they were granted to clerics and laymen of high rank, is the more natural one. It is supported, moreover, by canon 13 of this series and was adopted by Dionysius Exiguus, who rendered ἐν ὑπολήψει by *honoratioribus personis;* by the "Prisca," *bonae esse opinioni;* and by the Isidorian version, *in opere clariores.* The Synod of Laodicea (343–81) in canon 42 decreed that none of the clergy may travel without "canonical" letters. These letters certified to their morality and orthodoxy. A certain amount of laxity and irregularity prevailed, however, and sometimes credentials were admitted which had not been duly authenticated by the responsible authorities. Sometimes, too, such credentials had been forged or acquired by fraud. The 34th (32nd) Apostolic canon ordained: "Do not receive any stranger, whether bishop, priest, or deacon, without commendatory letters; and when such are offered, let them be examined. And if they be preachers of truth, let them be received; but if not, supply their wants but do not receive them into communion, for many things are done by impostors." [70]

Commendatory letters were issued by the bishops. With regard to the

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[68] In the West such letters were called *Literae formatae* or simply *formatae.*

[69] Beveridge, *Synodicon,* I, 125 f.; II, *Annotationes,* 117, 22.

[70] Cf. canons 25, 58 of Elvira and canon 9 of Arles (314); also the Antiochene synodal letter, Eusebius, *Hist. eccl.,* VII, 10, and Cyprian *epist.* XLIV, ed. Hartel.

letters of peace, the Synod of Antioch in canon 8 says that country priests may not grant canonical letters, that is, letters of peace; only to neighboring bishops may they send such letters. But country bishops, if they are in good standing, may grant letters of peace. From which we may conclude that they could be given by the priests in the cities.

CANON 12

Summary. No province shall be divided into two. Whoever shall do this shall be cast out of the episcopate. Such cities as have been cut off by imperial rescript shall enjoy only the honor of having a bishop; but all the rights pertaining to the true metropolis shall be preserved.

Text. It has come to our knowledge that some, contrary to ecclesiastical statutes, applied to the government and by means of imperial rescripts divided one province into two, so that there came to be two metropolitans in a single province. The holy council has decided, therefore, that in the future no bishop shall dare act thus; if he attempt to do so, he shall be deposed. Those cities, however, which have already by means of imperial letters obtained the honorary title of metropolis, shall together with their bishops enjoy the honor only, so that all the rights of the real metropolis be maintained.

Comment. In conformity with circumstances, the Church had adopted the civil divisions of the Empire. Each civil province constituted also an ecclesiastical province with a metropolitan (cf. Nicaea, canons 4, 6). The division, then, of a province into two naturally implied that the city thus raised to the rank of a civil metropolis became thereby also an ecclesiastical metropolis, according to the rule accepted by the Greek Church that the ecclesiastical rank of a city is measured by its civil rank.[71] The cases contemplated by our canon are two. It happened sometimes (a) that a bishop, for the sole purpose of exalting himself to the rank of a metropolitan, would induce the emperor to raise his see, contrary to the canons, to the rank of an ecclesiastical metropolis, the rank of civil metropolis, however, being withheld from the city; or (b) that the title only of metropolis was conferred on the city, and the bishop from motives of ambition would forthwith arrogate to himself all the rights and privileges of an ecclesiastical metropolitan and cut a province in two, though there was no intention on the part of the emperor to divide the province for civil much less for ecclesiastical purposes. In the first case the council clearly had in mind the action of Eustathius of Berytus, which it had considered in the fourth

[71] Cf. canons 17, 28 of this council and canon 9 of Antioch.

session.[72] The second case is illustrated by the efforts of Anastasius of Nicaea, with which the council dealt in its thirteenth session.[73]

CANON 13

Summary. Unknown clerics may not officiate anywhere.

***Text.* Foreign clerics and readers are under no circumstances to officiate in another city without commendatory letters from their own bishop.**

Comment. The contents of this canon have been considered in canon 11 of this series. They were renewed by the Council of Trent: "No cleric who is a stranger shall without commendatory letters from his own ordinary, be admitted by any bishop to celebrate the divine mysteries and to administer the sacraments." [74]

CANON 14

Summary. Minor clerics are forbidden to marry heretical women, or to give their children in marriage to heretics.

***Text.* Since in some provinces it has been granted to readers and cantors to marry, the holy council has decided that it is not permitted to any of them to marry an heretical woman; those, however, who already have children from such unions, must, if they already had them baptized among heretics, bring them into the communion of the Catholic Church. If they are not yet baptized, they must not permit them to be baptized among the heretics, nor must they give them in marriage to a heretic, a Jew, or a pagan, unless the person to be thus united to the orthodox party promises to adopt the orthodox faith. If anyone transgresses this ordinance of the holy council, he shall be subject to canonical penalties.**

Comment. In this canon the council drew up some rules governing the married life of lectors and cantors. The lector, or reader, is a cleric having the second of the four minor orders. During the first centuries his function was to read all the liturgical lessons, including the Epistle and Gospel, for the Christians continued the Jewish practice of reading the Scriptures publicly in the church. His position was a dignified one and required a higher standard of education than that of most minor offices. Tertullian tells us that readers were found even in heretical sects.[75] In the early times

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[72] Mansi, VII, 86–98; Hefele-Leclercq, II, 713–15.
[73] Mansi, VII, 302–14; Hefele-Leclercq, II, 761–63.
[74] *Sess. XXIII, c.16 de ref.*
[75] *De praescr. haeret.*, c.41.

the lower functions connected with the divine services were performed partly by the deacon and partly by laymen. It was only with the expansion of the Church that the necessity arose of appointing special clerks to attend to these duties, and as the idea gained ground that everyone who performs an office in connection with divine services should be given a special blessing and dedication, the reader, too, was instituted by prayer and ceremony and thus ranked among the clergy.[76] The first to make mention of a Christian reader is Justin Martyr (d. *ca.* 165).[77] That in this case and at this time he was still a layman, there can scarcely be any doubt. Pope Cornelius (251–53) in a letter to Fabius bishop of Antioch states that the Church of Rome has among other clerics fifty-two exorcists, readers, and porters, certainly ordained.[78] Justinian fixed the number of readers in the Church of St. Sophia at 110, that of cantors at 25.[79] The Apostolic Constitutions (VIII, 22) contain a form for the ordination of the reader. Another form is given in canon 8 (96) of an old Western collection of canons.[80] Cyprian speaks of having ordained Aurelius and Celerinus readers.[81] In the conferring of orders, the Synod of Antioch (341) in canon 10 restricted the chorepiscopi to readers, subdeacons, and exorcists. Laodicea in canon 23 forbade readers and cantors to wear the *orarium*, the deacon's stole. The office gradually lost all importance and today is nothing more than a stepping-stone to major orders. In the Eastern Churches the liturgical lessons are still supposed to be read by a reader, but his office, like the other minor offices, may, and often is, discharged by a layman. It never involved the obligation of celibacy. In the earlier discipline the reader was permitted to contract only one marriage, and that with a virgin.

The cantor was the chief singer, and sometimes director, of the ecclesiastical choir. The office as such implied no orders of any kind. It was not known during the first three centuries, being included during that period in the office of reader, from which it was separated about the beginning

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[76] Wieland, "Die genetische Entwickelung d. sog. Ordines minores in d. 3 ersten Jahrh.," in *Röm. Quartalschrift, Suppl. Bd.* 7, Rome, 1897; Duchesne, *Christian Worship*, pp. 343, 346, 364, 376. Some theologians maintain that the subdiaconate and the four minor orders have developed from, and hence must have been virtually contained in, the diaconate. Pohle-Preuss, *The Sacraments*, IV (St. Louis, 1920), 106–14.

[77] *Apologia I*, 67.

[78] Denzinger, *Enchiridion*, no. 45; Eusebius, *Hist. eccl.*, VI, 43.

[79] *Novella* III, c. 1.

[80] Denzinger, no. 156. This collection of 104 canons, for a long time wrongly ascribed to a fourth synod of Carthage (398), did not issue from a single council, or from several African councils. It originated in the West during the sixth century and is the work of an individual, who took into his collection canons issued by African and other Western councils and also many issued by Oriental councils. The collection is given by Migne, *PL*, LVI, 879–89; Mansi, III, 949–60, and the Ballerini, *Op. S. Leonis I*, III, 653–68.

[81] *Epp.* XXXVIII, XXXIX.

of the fourth century.[82] But even after this, no definite line seems to have separated the duties of the two offices. The Synod of Laodicea in canon 15 declared that no one (which does not include the congregation) shall sing in the church except the canonical singers, who go up into the ambo and sing from a book. The ambo was the place for the reader, not for the singer. In canon 23 the same synod declared that the readers and singers have no right to wear a stole and to read or sing thus. Socrates tells us that in the city of Alexandria readers and cantors were chosen from the catechumens and the faithful.[83] In some localities clerics began their ecclesiastical career as readers. This seems to have been the practice in Africa, as is indicated by the letters of Cyprian, especially the two already referred to. In proportion as the reader's duties became restricted he was entrusted with others. But this restriction did not reduce their number. The readers became cantors and were assigned to choral duties, and this practice explains the large number usually attached to a single church.

The opening sentence of the canon shows that the practice of allowing lectors and cantors to marry was not universal. The 27th Apostolic canon and canon 6 of the Trullan Synod (692) conceded this to them only. Elvira (*ca.* 305) in canon 33, the earliest legislation on the subject, imposed celibacy on all *qui in ministerio positi sunt.* The Church looked with disfavor on mixed marriages irrespective of whether the parties were clerics or laymen. Cyprian characterized marriages between Christians and unbelievers as a sign of moral decadence.[84] Yet in ancient times marriages between heathen men and Christian women were not at all uncommon; first, because Christian women outnumbered Christian men, and secondly, because the heathen husband was usually too indifferent to interfere either with the religion of his Christian wife or with the rearing of the children as Christians. That is the reason why in some localities the discipline was more lenient in the matter of marriages between Christian women and heathen men than it was between Christian women and heretics or Jews.[85]

CANON 15

Summary. No woman shall be ordained deaconess who is not forty years of age. If after ordination she should dishonor her ministry by contracting marriage, she shall be anathematized.

***Text.* A woman is not to be ordained deaconess before she is forty years of age, and then only after a careful examination. But if, after**

[82] Probst, *Kirchl. Disciplin in d. 3 ersten christl. Jahrh.* (Tübingen, 1873), p. 116.

[83] *Hist. eccl.*, V, 22; Wieland, *op. cit.*, pp. 165–70.

[84] *De lapsis*, 6. Cf. also Elvira, canons 15, 16; Arles, canon 11; Laodicea, canons 10, 31; Trullo, canon 72.

[85] Köhne, *Die Ehen zwischen Christen und Heiden in d. ersten christl. Jahrh.*, Paderborn, 1931; Preisker, *Christentum u. Ehe in d. ersten drei Jahrh.*, Berlin, 1927.

being ordained and having been for some time in the service, she marries, despising the grace of God, she is to be anathematized together with her consort.

Comment. The subject of deaconesses in the early Church has already been partly considered under canon 19 of the Council of Nicaea. What interests us most in the present canon is the matter of their ordination. As was pointed out in the comments on the canon just referred to, at the time of the First General Council deaconesses were laymen, they did not receive any imposition of hands. But after that council, toward the middle of the fourth century, a change took place; women were promoted by a prescribed rite to an ecclesiastical or clerical order and continued to exercise in the Church the same functions that they had exercised till then as laymen. This development was a natural one and was in line with the development of all the minor orders. During the first 225 years or so in the West and for a century later in the East, the lower offices afterward exercised by the minorites were performed by laymen.[86] In this respect the development in the East and West was uneven. The ceremony or ritual act of investing the deaconess with office was at first no doubt very simple. Gradually, however, this simplicity faded into the background and was replaced by a solemn and elaborate ceremonial, so much so as to make us wonder whether by that act she received the diaconal order but by reason of sex was restricted in the full exercise of it. St. Basil (d. 379) speaks of the body of a deaconess as being consecrated.[87] Epiphanius (d. 403) assigns her to an ecclesiastical order.[88] Our canon determines the age before which a woman may not be ordained a deaconess.

The question naturally suggests itself, what was the nature of that ordination? Did the woman so ordained really receive an ecclesiastical order or was it merely a *benedictio* conferred with pomp and solemnity? Most scholars who have occupied themselves with the subject maintain the former, while others admit only the latter, basing their position on the repugnance of the idea that a woman can in any orthodox sense be the recipient of an order.[89] However much one would wish to share the latter view, our evidence seems to point unmistakably to the alternative that they constituted an ecclesiastical order with clerical prerogatives. Not indeed that

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86 Cf. comments on I Nicaea, canon 19.

87 *Epist.* CXCIX, c. 44.

88 *Haereses*, 79.

89 Dr. Hein. Schäfer went so far as to make the deaconess the recipient of a major order, and widows and virgins consecrated to God the recipients of minor orders. That is going too far, and how in the case of virgins such a conclusion can be drawn from c. 1, X, *De temp. ord.*, I, 11, is not easy to understand. *Die Kanonissenstifter im deut. Mittelalter* (Stuttgart, 1907), p. 49.

they were thereby placed on a level with the deacon, but whatever it was that they received was less than what the deacon received and in some localities more than what the subdeacon received.[90] Thus, in the eighth book of the Apostolic Constitutions, chapter twenty, we have a ritual for the ordination of the deaconess. It stands between the ordination ritual used for the deacon and that for the subdeacon, and is closely modeled on that used for the former, as the following indicates:

Form of prayer for the ordination of a deacon.

Concerning the ordination of deacons, I Philip, make this constitution: Thou shalt ordain a deacon, O bishop, by laying thy hands upon him in the presence of the whole presbytery and of the deacons, and shalt pray, and say:

O God Almighty, the true and faithful God, who art rich unto all that call upon Thee in truth, who art fearful in counsels, and wise in understanding, who art powerful and great, hear our prayer, O Lord, and let Thine ears receive our supplication, and cause the light of Thy countenance to shine upon this Thy servant, who is to be ordained for Thee to the office of a deacon; and replenish him with Thy Holy Spirit, and with power, as Thou didst replenish Stephen, who was Thy martyr, and follower of the sufferings of Thy Christ. Do Thou render him worthy to discharge acceptably the ministration of a deacon, steadily, unblamably, and without reproof, that thereby he may attain a higher degree, through the medi-

Form of prayer for the ordination of a deaconess.

Concerning a deaconess, I Bartholomew, make this constitution: O bishop, Thou shalt lay thy hands upon her in the presence of the presbytery and of the deacons and deaconesses, and shalt say:

O Eternal God, the Father of our Lord Jesus Christ, the Creator of man and of woman, who didst replenish with the Spirit Miriam, and Deborah, and Anna, and Huldah; who didst not disdain that Thy only begotten Son should be born of a woman; who also in the tabernacle of the testimony, and in the temple, didst ordain women to be keepers of Thy holy gates, do Thou now also look down upon this Thy servant, who is to be ordained to the office of a deaconess, and grant her Thy Holy Spirit, and cleanse her from all filthiness of flesh and spirit, that she may worthily discharge the work which is committed to her to Thy glory and the praise of Thy Christ, with whom glory and adoration be to Thee and the Holy Spirit forever. Amen.

[90] The subdiaconate is a minor order in the Eastern Church; in the Latin Church it was raised to the rank of a major order by Innocent III (c. 9, X, *De aet. et qual.*, I, 14).

ation of Thy only begotten Son, with whom glory, honor, and worship be to Thee and the Holy Spirit forever. Amen.[91]

A comparison of these two forms reveals two points of difference, namely, in the case of deacons the reference to the outpouring of the Holy Spirit is more strongly emphasized, and the prayer "that thereby he may attain a higher degree" seems to open to them the door of promotion to a higher ecclesiastical dignity, that of priest or bishop.

The Byzantine ritual for the ordination of deaconesses has been preserved for us by Assemani.[92] It also stands between that of the deacon and that of the subdeacon. There are the laying on of hands and the invocation of the Holy Ghost. Toward the end of the ceremony the bishop invests her with the diaconal stole, placing it under the veil, and after she has communicated he hands her the chalice, which she places on the altar.

The clerical character of these women is further illustrated from imperial legislation. The Emperors Theodosius and Justinian placed all legal enactments concerning deaconesses under the title "De episcopis et clericis." In regard to the number of clerics at the Church of St. Sophia in Constantinople, Justinian ruled that the number of priests was not to exceed sixty, *diaconos autem masculos centum, et quadriginta feminas, subdiaconos vero nonaginta, lectores autem centum et decem, cantores viginti quinque. . . .*[93] In chapter six of the sixth Novella, the title of which is *Quomodo oporteat episcopos et reliquos clericos ad ordinationem adduci*, he gives directions concerning the age and vow of chastity of deaconesses. Among other things he says there: *Definimus pudicitiam conservari volentes quam diligentissime a venerabilibus diaconissis, ut quod decet naturae*

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[91] Translations are taken from *The Ante-Nicene Fathers*, VII (New York, 1888), 492. The Apostolic Constitutions are a pseudo-apostolic collection of treatises dealing with Christian discipline, worship, and doctrine. It consists of eight books and originated toward the end of the fourth century, most probably in Syria. Who the compiler was is not known. At any rate he was not strictly orthodox, for the work embodies subordinationist ideas. As an historical document, however, it is of the highest importance, for it reveals to us as no other ancient document does, the religious conditions and liturgical observances of the third and fourth centuries. Except for the Apostolic Canons (also a pseudo-apostolic collection), the eighth book is entirely of a liturgical character. With certain modifications of his own, it represents the liturgy used in the Church of Antioch in the compiler's time, that is, the fourth century. Chapters III-XXVII give the forms then used for the conferring of all orders, and in chapters V-XV, commonly known as the Clementine Liturgy, we have the oldest extant, and what can be called a complete, form or order of the rites of the mass. How far back into the fourth century the use of the given forms of ordination go, cannot be definitely determined. Those for the major orders probably go back to the time of the First General Council; the others appear to be of a later date.

[92] *Codex liturgicus*, XI (Romae, 1763), 115-18.

[93] *Novella* III, c. 1.

custodiant, et quod debetur sacerdotio, conservent. Deaconesses who violate their vow of chastity are to lose their *ministerium ecclesiasticum* (deposition, a penalty applied only to clerics) and are to spend the remainder of their life in a monastery.[94] St. Basil made the rule that a deaconess who violates her vow of chastity is to undergo the punishment meted out to a cleric and not that applied to a laic.[95]

The West was always reluctant in accepting deaconesses as a recognized ecclesiastical institution. Indeed, here there is no mention of deaconesses till 441 by the Synod of Orange. The earliest mention of them in Italy seems to be the year 539, a point of time when in the East the duties of the office had practically come to an end, though deaconesses continued in the Eastern Church more or less as ornaments. The Trullan Synod (692), for instance, renewed the present decree of Chalcedon.[96] To speak of deaconesses in the West is confusing; the name is a misnomer, for it did not represent here what it represented in the East. Strictly speaking there were no deaconesses in the West, as we know them during the fourth and fifth centuries in the East; and if the name was here and there applied to them, it was because it was an importation from the Orient. Ordination of so-called deaconesses in the West conferred on the recipient neither a dignity nor an office; it was nothing more than an avowal or profession of chastity, and this only did she have in common with the deaconess of the Orient.[97] Three Western Synods, Orange (441) in canon 26,[98] Epaon (517) in canon 21,[99] and Orleans (533) in canon 18,[100] forbade the ordination of *diaconae*. In canon 17 the latter synod decreed that women who contrary to the canons (*supra*, Orange, canon 26, and Epaon, canon 21) have received the *benedictio diaconatus*, are, if they marry again, to be excommunicated. But if, heeding the admonition of the bishop, they recognize their error and sever such unions, they may, after having performed the penance imposed, be again received into communion.[101]

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[94] *Novella* CXXIII, c. 30.

[95] *Epist.* CXCIX, c. 44.

[96] C. 14; Hefele-Leclercq, III, 565; Mansi, XI, 950.

[97] Kalsbach, "Die altkirchl Einrichtung d. Diakonissen bis zu ihrem Erlöschen," in *Röm. Quartalschrift, Suppl.* Bd. 22 (Freiburg, 1926), 80 f.

[98] *Diaconae omnimodis non ordinandae; si quae jam sunt, benedictioni quae populo impenditur capita submittant.* Hefele-Leclercq, II, 446.

[99] *Viduarum consecrationem, quas diaconas vocitant, ab omni regione nostra penitus abrogamus, sola eis poenitentiae benedictione, si converti ambiunt, imponenda.* Mansi, VIII, 561; Hefele-Leclercq, II, 1039.

[100] *Placuit etiam, ut nulli postmodum foeminae diaconalis benedictio pro conditionis hujus fragilitate credatur.* Mansi, VIII, 837; Hefele-Leclercq, II, 1135.

[101] *Foeminae quae benedictionem diaconatus hactenus contra interdicta canonum acceperunt, si ad conjugium probantur iterum devolutae, a communione pellantur. Quod si hujusmodi contubernium, admonitae ab episcopo, cognito errore dissolverint, in communionis gratiam acta poenitentia revertantur.* Mansi, Hefele, *l. c.*

Who were these *diaconae?* If not in all, certainly in many or most cases it seems they were the wives or widows of men who had been raised to the rank of bishop, priest, or deacon. After the ordination of these men, the women were placed in a monastery at a proper distance from the residence of their former husbands. They could not receive the *benedictio episcopalis* or *presbyteralis,* hence they were given the *benedictio diaconalis* and were known as *diaconae.* The *diacona,* then, was an ordained or consecrated widow of a bishop, priest, or deacon, and the *benedictio diaconalis* was the solemn profession of chastity. We have a trace of this practice in the East. The Trullan Synod (692) in canon 48 decreed: "The wife of him who is advanced to the episcopal dignity shall be separated from her husband by their mutual consent, and after his ordination and consecration to the episcopate she shall enter a monastery situated at a distance from the abode of the bishop, and there she shall be provided for by him. If she is deemed worthy, she may be advanced to the dignity of a deaconess."[102] The practice of ordaining such women does not seem to have been general in the West. The three Gallican synods mentioned above are the only ones that forbade it. The subject is obscure and is particularly rendered more so by variations in terminology. Often we find the characteristic title of the woman to have been the feminine counterpart of the order with which the husband was invested. Thus the Synod of Tours (567) in canon 13 decreed: *Episcopum episcopam non habentem nulla sequatur turba mulierum, licet salvetur vir per mulierem fidelem, sicut et mulier per virum fidelem, ut apostolus ait.*[103] In canon 19 the same synod ordained: *Si inventus fuerit presbyter cum sua presbytera, aut diaconus cum sua diaconissa, aut subdiaconus cum sua subdiaconissa, annum integrum excommunicatus habeatur, et depositus ab omni officio clericali, inter laicos se observare cognoscat.*[104] Gregory the Great praises a certain priest, *qui ex tempore ordinationis acceptae presbyteram suam ut sororem diligens, sed quasi hostem cavens.*[105] A Roman synod (721) under Gregory II decreed: *Si quis presbyteram duxerit in conjugium, anathema sit* (canon 1); *Si quis diaconam in conjugium duxerit, anathema sit* (canon 2); *Hadrianus filius Exhilarati, quod post praestitum sacramentum in apostolica confessione Epiphaniam diaconam illicito ausu in uxorem habet, anathema sit* (canon 14); *Epiphania diacona, quae post praestitum sacramentum cum Hadriano Exhilarati filio fuga lapsa est, anathema sit* (canon 15).[106]

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[102] Mansi, XI, 966; Hefele-Leclercq, III, 569.

[103] Mansi, IX, 795; Hefele-Leclercq, III, 187.

[104] Mansi, IX, 797; Hefele-Leclercq, III, 189. The same synod in canon 12 ruled: *Episcopus conjugem ut sororem habeat,* etc., and they must reside a reasonable distance apart. Mansi, IX, 795; Hefele-Leclercq, III, 187.

[105] *Dial.,* IV, 11; Migne, *PL,* LXXVII, 336.

[106] Mansi, XII, 263 f.; Hefele-Leclercq, III, 597. Canons 1 and 2 were renewed by a Roman synod (743) under Pope Zachary in canon 5. Mansi, XII, 383.

The *ordo ad diaconam faciendam* seems to have been more solemn and elaborate than that which obtained in the East. In brief outline it was as follows: there was the *missa ad diaconam consecrandam*. After the introductory *oratio, ordinanda ante altare prostrata*, was sung the litany used in the conferring of the major orders. There was the consecration, the laying on of hands and the invocation of the Holy Ghost. Then the bishop invested her with the diaconal stole, saying: *Stola jucunditatis induat te Dominus.*[107]

However, notwithstanding all that speaks and seems to speak in favor of the ordination of deaconesses, such ordination must not be understood to imply the bestowal of a major order. The deaconess formed no part of the *hierarchia ordinis*. What she received cannot be regarded as "an outward sign of an inward grace." If the ritual for her ordination was closely modeled on that used for the ordination of a deacon, and if in the order of rank she was frequently placed immediately after the deacon, it was because her functions were in many respects akin to those of the deacon. In the eighth book of the Apostolic Constitutions, chapter twenty-eight, we read: "A deaconess does not bless, nor perform anything pertaining to the office of priests or deacons, but she is only to keep the doors and to minister to the priests in the baptism of women on account of decency. A deacon excommunicates a subdeacon, a reader, a singer and a deaconess, if there be any occasion, in the absence of a priest. It is not lawful for a subdeacon or for a reader or for a singer or for a deaconess to excommunicate anyone of the clergy or laity, for they are the ministers to the deacon."[108] In chapter thirteen it is pointed out that deaconesses are to communicate after the minor clergy and before the other women. The learned French Oratorian, Morin, ranks them among the minor clerics.[109] Their chief function was in the matter of baptism, which was by immersion and which was preceded by the anointing of the whole body. It was a matter of propriety that this anointing, which in the case of male catechumens was performed by the deacons, should in the case of females be discharged by women.[110] Whether they and the *ordo viduarum* before them brought communion to women who by reason of illness or otherwise were unable to visit the church, is not known; yet it should not be at all surprising when we consider that in the early days the faithful were permitted to take the consecrated bread home with them. There was no uniform custom or practice concerning either their ordination or functions. In a general way they

[107] Kalsbach, *op. cit.*, pp. 78–94; Schäfer, "Kanonissen u. Diakonissen," in *Röm. Quartalschrift*, XXIV (1910), 49–90.

[108] Cf. also chapter 31.

[109] *Itaque clericis diacono inferioribus exaequabantur. Commentarius de sacris ecclesiae ordinationibus* (Antwerp, 1695), p. 149.

[110] *Apost. Const.* III, c. 15.

ran parallel with the non-liturgical functions of the deacon. They discharged those charitable offices connected with the temporal welfare of the poorer classes of Christian women, which were performed for the men by the deacons. They prepared the female catechumens for baptism; visited and ministered to women afflicted with age and illness, and during the persecutions performed the same offices toward those in prison. They guarded the doors of the church, directed those of their own sex to their proper places, and maintained order among them. They served also as intermediaries between the clergy and the women of the congregation.[111]

CANON 16

Summary. A consecrated virgin and a monk may not marry under penalty of excommunication.

Text. **A virgin who has consecrated herself to the Lord God, and also a monk, are not allowed to marry; if they do so, they are to be excommunicated. The local bishop, however, shall have the authority to mitigate the severity of the punishment.**

Comment. According to the Latin translators, the latter portion of this canon gives the bishop the authority not only to mitigate and remove the penalty of excommunication, but also to withhold it altogether if he should see fit. Whether the council regarded the marriage of monks and consecrated virgins as invalid, the canon does not indicate; on the contrary, it seems to presuppose its validity. This is confirmed by the fact that, till the beginning of the twelfth century, the marriage of priests was considered valid. The Synod of Elvira in canon 13 condemned to perpetual and irrevocable excommunication consecrated virgins who had broken their *pactum virginitatis* and surrendered their honor, if they stubbornly refused to admit their error. If on the other hand they admitted their mistake, abstained in the future from all carnal relations, and devoted themselves to penance for the remainder of their life, they could regain communion at death.[112] The Synod of Ancyra in canon 19 classed with bigamists all virgins who broke their vow of chastity, and the Synod of Valence (374) in canon 2 decided that such persons should not be at once admitted to penance.[113] Emperor Jovian made it a capital crime to marry or carry off consecrated virgins.[114] The First Synod of Toledo (400) in canon 16 de-

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[111] *Ibid.*, II, c. 26.

[112] Koch, "Virgines Christi, die Gelübde d. gottgeweihten Jungfrauen in d. ersten 3 Jahrh.," *in Texte u. Untersuchungen z. Gesch. d. altchristl. Literatur* (Leipzig, 1907), pp. 86 f.

[113] Mansi, III, 493.

[114] Sozomen, *Hist. eccl.*, VI, 3.

creed that a consecrated virgin who has cast aside her honor, was to be admitted to communion only after having done penance for a period of ten years. The same penalty was incurred by him with whom she had sinned. Should such a virgin marry, then she was not to be admitted to penance till she had separated from her partner.[115] The Third Synod of Orleans (538) in canon 16 enacted that the ravisher of a consecrated virgin was to be excluded from communion till the day of his death, and in case she consented to such relation, the same penalty was to be imposed on her.[116]

As to the age at which virgins might be consecrated, the canons do not agree. There was as yet no general rule governing the matter, so that the question was left to the judgment of the bishop, or the custom of the locality was followed. The virgin Asella, as St. Jerome informs us, was consecrated to a life of virginity with appropriate ceremonies when she was hardly more than ten years of age.[117] St. Agnes of Rome, who suffered martyrdom when thirteen years old, made her profession of virginity at about the same age. That such consecration was frequently made at a very youthful age is abundantly evident from inscriptions in the Roman catacombs.[118] St. Basil fixed the age at sixteen or seventeen, regarding this as the age of discretion, and should any girls who are below that age be presented not from personal choice but from worldly advantages accruing therefrom to their kindred, they were not to be accepted until their own wishes in the matter could be ascertained.[119] St. Ambrose cautioned against the hasty veiling of a girl and urged that not maturity of age but of character was the main point to be considered.[120] A synod of Hippo (393) in canon 5 fixed the age at twenty-five,[121] whereas the synods of Saragossa (380) in canon 8 and of Agde (506) in canon 19 forbade the veiling of a virgin under forty years of age.[122]

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115 C. 27, C. XXVII, q. 1; Hefele-Leclercq, II, 124.

116 Mansi, IX, 16; Hefele-Leclercq, II, 1160.

117 *Epist.* XXIV, 2.

118 Wilpert, *Die gottgeweihten Jungfrauen in d. ersten Jahrh. d. Kirche* (Freiburg i. Br., 1892), pp. 24 ff.

119 *Epist.* CXCIX, c. 18.

120 *De virginitate*, c. 7.

121 Mansi, III, 919; Hefele-Leclercq, II, 86.

122 Mansi, III, 635; VIII, 328; Hefele-Leclercq, I, 987; II, 990. Regarding the ceremony connected with the veiling and the taking of the vow, the form of the habit, the age of profession, the manner of life of these women, as well as the beginnings of convent life, cf. Wilpert, *op. cit.; id.*, "Die gottgeweihten Jungfrauen in d. vier ersten christl. Jahrh.," in *Zeitschr. f. kath. Theologie*, XIII (1889), 302–30; Weckesser, "Das feierliche Keuschheitsgelübde d. gottgeweihten Jungfrauen i. d. alten Kirche," in *Archiv f. kath. Kirchenrecht*, LXXVI (1896), 83–104, 187–211, 321–51; Feusi, *Das Institut d. gottgeweihten Jungfrauen*, Freiburg, Schweiz, 1917; Koch, *op. cit.;* Scharnagl, *Das feierliche*

CANON 17

Summary. Village or rural parishes, if they have been possessed for thirty years, shall so continue. Disputes arising regarding them within that period and after shall be submitted to the provincial synod. If the dignity of a city be raised by the emperor, the parish shall conform to the civil standard.

Text. **The village or rural parishes of each Church are to remain undisturbed in the possession of the bishops now holding them, especially if, having obtained them without force, they have ruled them for thirty years. But if within the thirty years a contest has arisen in regard to them, or should thereafter arise, those who consider themselves wronged may appeal to the provincial synod. But if anyone shall have been wronged by his own metropolitan, he may apply for redress to the exarch of the diocese or to the see of Constantinople, as was said above. If any city has been or hereafter shall be elevated in dignity by the imperial authority, the arrangement of the ecclesiastical diocese shall conform to the civil and public standards.**

Comment. The meaning of the canon is this: If in the case of a rural parish lying between two dioceses, it is doubtful to which it belongs, it is to remain in the possession of that by which it has been ruled without question for the last thirty years. If, however, during that period a dispute regarding it has arisen, or shall thereafter arise, the two bishops claiming it are to take the matter before the provincial synod. In case one of the claimants is the metropolitan, they shall appeal to the exarch of the diocese or to the see of Constantinople. If any village or town has been or hereafter shall be raised by the emperor to the rank of a city, its Church also shall be erected into an episcopal see having its own bishop; and as the newly erected city is now no longer subject to its neighboring city but is placed immediately under the jurisdiction of the civil metropolitan of the province, so too shall the bishop of the new city be immediately under the jurisdiction of the ecclesiastical metropolitan of the province and not under that of the bishop to whom the Church as a village Church formerly belonged.[123]

Gelübde als Ehehindernis (Freiburg i. Br., 1908), pp. 6–17; Schiwietz, *Das morgenländische Mönchtum*, I (Mainz, 1904), 1–43; Leclercq, "Ancilla Dei," in *Dict. d'archéologie chrétienne*, I, 1973–93.

[123] Concerning the principle involved in the provision contained in the last sentence of the canon, and the difference it represents between the Eastern and Western ecclesiastical mind, cf. Bright, *Canons of the First Four General Councils*, pp. 201 f.

CANON 18

Summary. Clerics or monks found forming plots against bishops or fellow-clerics, shall be deposed.

Text. The crime of conspiracy or faction has been absolutely prohibited even by the secular laws, much more ought it to be forbidden in the Church of God. If, therefore, any clerics or monks be found forming a conspiracy or plot or concocting plans against bishops or fellow-clerics, they shall be completely deposed from their rank.

Comment. Occasion for this canon was most probably given by the machinations of certain clerics and monks against their bishop, Ibas of Edessa, whom they accused of Nestorianism, simony, and general maladministration. Ibas had been an enthusiastic supporter of St. Cyril, but at the same time was in complete sympathy with the theological school of Antioch, whose leaders were Diodorus of Tarsus, Theodore of Mopsuestia, and Theodoret of Cyrus. On the reconciliation between Cyril and John of Antioch, he had re-entered into communion with Cyril on the ground that the latter had virtually withdrawn his "objectionable articles." The partisans of Dioscurus succeeded in bringing about his deposition in the Robber Synod of Ephesus in 449. The present council considered his case in the ninth and tenth sessions, declared him orthodox, and restored him to his see.[124]

CANON 19

Summary. Twice each year the provincial synod shall be held wherever the metropolitan shall designate, and all matters of importance shall be settled.

Text. It has come to our ears that in the provinces the synods of bishops prescribed by the canons are not held, and that on this account many ecclesiastical matters which need correction are neglected. The holy council has decided, therefore, that in accordance with the canons of the holy fathers, the bishops of every province shall assemble twice a year wherever the metropolitan shall think suitable and shall settle whatever matters may have arisen. Those bishops who do not attend, but remain in their own cities, though they are in good health and free from all unavoidable and necessary business, shall receive a brotherly rebuke.

Comment. This canon renews the provisions of Nicaea (canon 5) and Antioch (canon 20) for the holding of provincial synods twice a year. It is not clear what the council means by a "brotherly rebuke," unless it be exclusion from communion or intercourse with the other bishops. The

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[124] Hefele-Leclercq, II, 742–55.

Fifth Synod of Carthage (401) in canon 10 declared that bishops who without a good excuse do not attend provincial synods, or having a good excuse do not so inform their primate, *ecclesiae suae communione debent esse contenti*,[125] that is, they are not excommunicated, but for a time are forbidden to have communication or intercourse with their colleagues. In like manner the Second Synod of Arles (443 or 452) in canon 19 decreed that if a bishop were unable to attend a provincial council on account of ill-health, he should send a representative; if without excuse he neglected to attend, or if he left the council before it was dissolved, *alienatum se a fratrum communione cognoscat; nec eum recipi liceat, nisi in sequenti synodo fuerit absolutus*,[126] that is, he was excluded from communion or intercourse with the other bishops till absolved by a subsequent synod. The same penalty was decreed by the Synod of Agde (506) in canon 35 [127] and by that of Tarragona (516) in canon 6; [128] and the Synod of Worms (868) in canon 16 repeated verbatim the decree of Arles.[129]

CANON 20

Summary. Migration of clerics is forbidden unless necessity dictates otherwise. Hereafter the one receiving such and the one received shall be excommunicated.

Text. **Clerics officiating in one Church shall not, as we have already decreed, be appointed to a Church of another city, but they must be content with the one in which they were first deemed worthy to minister; those being excepted who, driven through no fault of theirs from their own Church, have been compelled to go to another. If any bishop after this decision shall receive a cleric belonging to another bishop, it is decreed that both the one received and the one receiving shall be excommunicated until the cleric thus received shall have returned to his own Church.**

Comment. This canon is the third of those proposed by Marcian at the end of the sixth session and is really a continuation of canon 5 to which it refers. The exception made in this canon is intelligible when we recall the general movement of barbarian forces during the fifth century. At the time of the council Western Europe was invaded by the Huns under Attila, and the news of the massacre of the clergy of Metz on the eve of Easter had surely reached the ears of the assembled bishops before the dissolution of the council. Some years earlier the Vandal Genseric had expelled from their Churches the bishops and priests of Western Africa. During such

[125] C. 10, D. XVIII.
[126] C. 12, D. XVIII.
[127] C. 13, D. XVIII.
[128] C. 14, D. XVIII.
[129] Mansi, XV, 872.

movements the clergy were dispossessed of their churches and forced to seek refuge in other dioceses and in other countries. The Trullan Synod in canon 18 ordered all clerics who in consequence of a barbarian invasion had left their Churches and had been received by a bishop of another diocese, to return to their own Churches when such barbarian migration had come to an end.

The term "excommunication" in this canon is most likely not to be understood in its strict canonical acceptation, that is, in the sense of total exclusion from Church membership. What the council in all probability meant was either a temporary exclusion or separation from communion with the other bishops or, as seems more probable, suspension from the performance of episcopal functions on the part of the bishop and from clerical functions on the part of the cleric received. That the latter was the meaning of the council seems to be confirmed by the action of subsequent synods in the matter of ordination of clerics belonging to another diocese. The Third Synod of Orleans (538) in canon 15 decreed that if a bishop overstepped the limits of his jurisdiction, he was to be suspended from saying mass for one year.[180] The Fifth Synod of Orleans (549) in canon 5 curtailed this suspension to six months.[181] The Synod of Tribur (895) in canon 28, dealing with the same subject, repeated verbatim this portion of the canon of Chalcedon.[182] At the Second General Council of Lyons (1274) in canon 15, Gregory X decreed that bishops who knowingly or through affected ignorance or any other studied fabrication ordain clerics of another diocese without the permission of the ordinary of those ordained, *per annum a collatione ordinum decernimus esse suspensos.*[183] The Council of Trent decreed that a bishop who ordains clerics belonging to other dioceses without testimonial letters from the respective ordinaries, *a collatione ordinum per annum sit suspensus.*[184] In the East the patriarchs later on acquired a right to take clerics from any of the provinces subject to their jurisdiction and attach them to their own Churches.

CANON 21

Summary. The character of clerics and laymen who bring charges against clerics must be investigated.

Text. **Clerics and laymen who bring charges against bishops and clerics are not to be received indiscriminately and without examination, but their own character must first be investigated.**

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180 Mansi, IX, 16; Hefele-Leclercq, II, 1160.
181 Mansi, IX, 120; Hefele-Leclercq, III, 160.
182 Mansi, XVIII[a], 146.
183 *Id.*, XXIV, 91; Hefele-Leclercq, VI, 194.
184 *Sess. XXIII, c. 8 de ref.* Kober, *Die Suspension* (Tübingen, 1862), pp. 291 ff.

Comment. During the protracted Arian, Nestorian, Monophysite, and other controversies, the atmosphere of ecclesiastical society was seething with suspicion, defamation, misrepresentation, and denunciation. Accusation had become the one weapon that was ever ready at hand. This is fully illustrated in the life of St. Athanasius and many others. St. John Chrysostom did not exaggerate when he wrote that a bishop must watch on all sides, lest someone should find a weak point in his conduct and there begin his attack. For all are watching him, ready to wound and overthrow him. . . . If he happens to make some little mistake, all his good deeds will avail him nothing against the tongues of accusers, and they who are nearest to him and minister with him are the very men whom he has most reason to fear. At the time of our council matters in this respect had changed but little; hence its decision that the character of the accusers must first be investigated before any credence is given to their charges. An excellent commentary on this canon is that drawn up on the same subject by a synod of Constantinople (382) and usually, though erroneously, known as canon 6 of the First General Council of Constantinople held the preceding year.[135]

CANON 22

Summary. After the death of their bishop, clerics may not seize his property.

Text. **It is not lawful for clerics after the death of their bishop to seize the property belonging to him, as has been forbidden also by the ancient canons; those who do so shall be in danger of deposition from their rank.**

Comment. The ancient canons here referred to are the 24th of Antioch and probably the 40th (39th) of the Apostolic canons. The former points out that priests and deacons should be accurately informed as to what belongs to the Church and what to the bishop personally, so that at his death the Church may not lose what belongs to her; for it is just that the bishop should leave what belongs to him to whom he pleases, and at the same time that the Church sustain no loss. Our canon, of course, deals only with the bishop's personal property, and not with that which he held in the name of the Church. The Synod of Tarragona (516) in canon 12 decreed that when a bishop dies intestate the priests and deacons are to make a complete inventory of all his personal effects,[136] and that of Lerida (546) in canon 16 ruled that at the death of a bishop his residence is to be entrusted to an ecclesiastical steward with one or two assistants, who should guard it

[135] Hefele-Leclercq, II, 32.
[136] C. 6, C. XII, q. 5.

against theft till the installation of the new incumbent. Whoever acted in contravention of this incurred excommunication.[137]

CANON 23

Summary. Clerics and monks who spend much time in Constantinople contrary to the will of their bishops, and create disorders, shall be expelled from the city.

Text. It has come to the ears of the holy council that some clerics and monks, without having received any commission from their bishops, and sometimes even while under sentence of excommunication by him, betake themselves to Constantinople and remain there a long time, causing disturbances and creating disorders in the affairs of the Church, even turning over the houses of some people. The holy council has decided, therefore, that such persons shall first be notified by the advocate of the most holy Church of Constantinople to depart from the imperial city; but if they impudently persist in the same practices, they are to be expelled by the same advocate even against their will and must betake themselves to their own places.

Comment. This canon might be called the concluding paragraph of canon 4, dealing with the disorderly conduct of fanatical monks and clerics. On the office of advocate, see the remarks on canon 2 of this series.

CANON 24

Summary. Monasteries once consecrated and their property shall not be permitted to become secular dwellings.

Text. Monasteries which have once been consecrated with the consent of the bishop shall remain monasteries in perpetuity, and all the property belonging to them shall be preserved to them, and no longer shall they be permitted to become secular dwellings. Those who permit this to be done shall be subject to the canonical penalties.

Comment. In canon 4 the council prescribed that monasteries are not to be erected without episcopal sanction. To guard against abuses, it subjected those already in existence to episcopal jurisdiction. In the present canon it aims to maintain their rights. The secularization of monasteries is an old evil, one that grew with their wealth and influence. The perpetrators of the evil were not always civil officials and powerful nobles, but not infrequently the very men who had been chosen or appointed to protect such institutions and their interests: stewards, advocates, and patrons. In

[137] C. 38, C. XII, q. 2.

threatening such persons with the penalties prescribed by the canons, the council probably had in mind Apostolic canons 72 and 73 (71, 72), which prohibited all acts of sacrilege, since there is no earlier canon known which deals specifically with an evil of this kind.

CANON 25

Summary. Ordinations of bishops shall take place within three months unless necessity dictates a delay. If any metropolitan should act otherwise, he shall be subject to the canonical penalties. The revenues of the widowed Church shall remain with the steward.

Text. **Since, as we have heard, some metropolitans neglect the flocks committed to them and delay the ordination of bishops, the holy council has decided that the ordination of bishops shall take place within three months, unless an unavoidable necessity should require the term to be extended. Any metropolitan doing otherwise, shall be subject to the canonical penalty. The revenues of the widowed Church, however, shall be guarded by the steward of the same Church.**

Comment. Whether the three months within which the consecration of bishops is to take place were reckoned from the first day of the vacancy of the see, or from the day the election of a bishop was ratified by the metropolitan (cf. Nicaea, canon 4), is not clear. The canon seems to suggest the former. The Council of Trent decreed that bishops-elect must receive the rite of consecration within three months after papal confirmation; if they fail to do so they shall be bound to restore the fruits they have received. If they further neglect to do so for three more months, they shall be *ipso jure* deprived of their Churches.[188] It will be noticed that Trent threatens only the bishops-elect, not the metropolitans, for the reason, no doubt, that the former and not the latter had often been the cause of delay. In threatening the metropolitans, the council uses the very general expression, canonical penalties. What these were we do not know, since we have no earlier decision dealing with a case of this kind.

The term χειροτονία (*ordinatio*) applied to the ordination either of a bishop, priest, or deacon.[189] Later the words "ordination" and "consecration" were used promiscuously. The Leonine Sacramentary speaks of *consecratio episcopi* and *presbyteri*, and *consecrationis dona* in regard to dea-

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[188] *Sess. XXIII, c. 2 de ref.*

[189] The verb χειροτονέω means primarily to vote or to elect by stretching out the hands, as was the practice in the Athenian Assembly. Secondly, it means to choose, to appoint, to designate, without any thought of election; and then in ecclesiastical Greek, to ordain, that is, to appoint with the ceremony of laying on or stretching out the hands over the one to be ordained (Acts 14:22; II Cor. 8:19).

cons, while in the Gelasian Sacramentary we find *consecratio diaconi* and *presbyteri*, and *ordinatio subdiaconi* and *episcopi*.[140] In conclusion the canon insists that the steward of the widowed Church shall take care of its revenues during the vacancy. A similar provision was made by the Council of Trent.[141]

CANON 26

Summary. Every Church having a bishop must have also a steward who shall be chosen from the clergy. Any bishop neglecting this shall be subject to the canons.

Text. Since in some Churches, as we have heard, the bishops manage the ecclesiastical properties without stewards (*oeconomi*), it has been decided that every Church having a bishop shall have also a steward chosen from its own clergy, who shall administer the property of the Church under the direction of its bishop, so that the administration of the Church may not be unattested and thereby the property of the Church squandered and reproach brought upon the priesthood. But if he (the bishop) will not do this, he shall be subject to the holy canons.

Comment. During the first three centuries the bishop was the sole administrator of Church property and the director of poor-relief. He was assisted in this by the deacons and widows appointed for this purpose. When after the time of Constantine, who granted the Church the right to acquire property, the ecclesiastical possessions grew, their administration naturally became more complex and burdensome. Then, too, the rapid expansion of the Church, with the ever increasing number of the poor, in many ways added to the episcopal duties. Under these circumstances, in order to give his time to the spiritual affairs of his Church, the bishop often found it necessary to appoint an *oeconomus*, that is, a steward or procurator, to whom he assigned under his own authority the care of its temporal affairs. As a rule the steward was appointed by the bishop, as was also his staff of assistants, and all were directly responsible to him. His duties were, besides the receipt and disbursement of Church revenues, the management of poor-relief and the guardianship and administration of ecclesiastical properties. This included the temporal affairs of the episcopal residence. Thus, when St. John Chrysostom became bishop of Constantinople, he ordered his *oeconomus* to reduce the expenses of the episcopal household. In the East the post was usually entrusted to the *diaconus episcopi*, though later also to a presbyter, and beginning with the fourth century his specialized activity took on gradually the character of a juridical ecclesiastical

140 Muratori, *Liturgia Rom. vetus*, I, 421 ff., 622 ff.

141 *Sess. XXIV, c. 16 de ref.*

office. In the schismatical Greek Church the *oeconomi* have continued down to the present day. In the West it seems the office was often committed to laymen, for in the Second Synod of Seville (619), presided over by St. Isidore, in canon 9 bishops were strictly forbidden to appoint laymen as *oeconomi*.[142] Later, the Western bishops as a rule contented themselves with the aid of a confidential assistant, a *vicedominus*, who had charge of the temporalities and ranked next to the bishop; but under the influence of the feudal system and by the fact that the bishops often became temporal sovereigns, his office gradually underwent modifications. The Council of Trent ordered the appointment of one or more *oeconomi* during an episcopal vacancy. Today the appointment of a Church steward is optional.

The office, unfortunately, both in the East and the West, in the West especially during the early Middle Ages, often became a fruitful source of fraudulent practices, for the stewards were not always honest men. Many used the office to enrich themselves or their kindred, or both. Frequent are the complaints met with in the course of the Church's history against stewards who appropriated to themselves or diverted into secular channels property belonging to the Church. The office offered many advantages, hence was eagerly sought after and was too often obtained through fraud and bribery. It is under this aspect that the council dealt with it in canon 2. In the present canon the appointment of a steward is made obligatory in every Church that has a bishop. The penalty consequent upon failure to comply with this provision is not very specific.

CANON 27

Summary. Those who forcibly carry off women, also their accomplices, are severely punished.

Text. The holy council has decided that those who forcibly carry off women, even under pretence of marriage, and also the accomplices or abetters of such ravishers, shall, if clerics, be deposed from their rank, if laymen, anathematized.

Comment. The ancient Roman law was lenient with woman-stealers or wife-captors. The purpose of such abduction was either marriage or, more usually perhaps, the gratification of lust. The law permitted the abductor to contract marriage with the one abducted if she was willing. To safeguard female virtue and the state, Emperor Constantine forbade such marriages. Justinian also forbade them and fixed the death penalty for the captor and his accomplices in the crime and the confiscation of their

[142] C. 22, C. XVI, q. 7.

property. During the first three centuries the crime was without doubt extremely rare among the Christians. According to St. Basil, there was during that period no ecclesiastical legislation on the subject.[143] The Synod of Ancyra in canon 11 decreed that virgins who have been betrothed, and who have afterward been carried off by others, shall be restored to those to whom they are betrothed, even though they have suffered violence from the abductor, but it did not prescribe any punishment for the culprit. But, when the persecutions had ceased, and a general spirit of laxity set in, the number of wife-captors became exceedingly numerous. During the fourth, fifth, and following centuries the Church united her efforts with those of the Christian emperors to destroy the evil. In provincial synods that extended well into the ninth century, she decreed in addition to the punishment of service, public penance and confiscation of property, the sentence of excommunication (to be judicially proclaimed) against laymen and deposition from ecclesiastical rank against clerics, who had violently abducted women or in any way abetted such abduction.

CANON 28

Summary. The bishop of New Rome shall enjoy the same honor as the bishop of Old Rome, for the former possesses equal privileges. For this reason the metropolitans of Pontus, of Asia, and of Thrace, as well as the bishops of barbarian countries, shall be ordained by the bishop of Constantinople.

Text. Following in all things the decisions of the holy fathers, and knowing the canon of the 150 most God-beloved bishops which has just been read, we also enact and decree the same things respecting the privileges of the most holy Church of Constantinople, New Rome. For the fathers rightfully granted privileges to the See of Old Rome, because that city was imperial, and the 150 most God-beloved bishops, actuated by the same consideration, awarded equal privileges to the most holy see of New Rome, judging with good reason that the city which is honored with the sovereignty and the senate, and enjoys equal privileges with old imperial Rome, should in ecclesiastical matters also be magnified as she is and rank next after her. And (we decree), therefore, that in the dioceses of Pontus, Asia, and Thrace, the metropolitans only, together with those bishops of the aforesaid dioceses living among barbarians, shall be ordained by the aforesaid most holy see of the most holy Church at Constantinople; while, of course, each metropolitan of the aforesaid dioceses shall ordain the bishops of his province in union with the (other) bishops of the same province, as is prescribed by the holy

[143] *Epist.* CXCIX, c. 30. Cf. also c. 22.

canons; but the metropolitans of the aforesaid dioceses, as has been said, shall be ordained by the archbishop of Constantinople, after the proper elections have been held according to custom and reported to him.

Comment. This is the famous twenty-eighth canon of Chalcedon and must be read in connection with canon 3 of the Council of Constantinople, of which the first part of the present canon is little more than a verbal expansion. It represents the realization of Constantinopolitan ambition. What was asserted by implication in canon 3 (*supra*) in reference to the political basis of Old Rome's ecclesiastical pre-eminence, is here explicitly and boldly stated, though in its second session when Pope Leo's letter was read, the council had recognized an ecclesiastical ground for that pre-eminence. The *primatus honoris* of canon 3 is entirely ignored, and instead the bishop of Constantinople is officially granted a vast jurisdiction, the independent authority of three exarchs being annulled in order to make him patriarch. All the metropolitans of Asia and Thrace are to be ordained in Constantinople, which puts them under the patriarch's jurisdiction; also those bishops whose sees are in barbarian territory. But in non-barbarian territories the bishops are to be ordained by the local metropolitans. Thus was the bishop of New Rome invested with the rights and prerogatives of a patriarch and his see exalted, in violation of canonical prescriptions (Nicaea, canon 6), to a rank second only to that of Old Rome.

But it was the first half of our canon that Rome particularly resented, not only because the council set out to renew a canon (Constantinople, canon 3) which Rome had never acknowledged, but especially because of its declaration that the primacy was conferred on the Church of Rome by the "fathers" because of that city's political position, a declaration that is historically false. For the authority of Rome did not originate with any declaration of the "fathers." Nicaea in canon 6 presupposes that prerogative. Nor did the civil or political importance of the city of Rome have anything to do with it. The supremacy of the Church of Rome is of supernatural origin; it is rooted in the fact of the succession of St. Peter, and only in the light of this fact is the history of the Church during the first three centuries intelligible. The basis of Old Rome's ecclesiastical pre-eminence is and always was Apostolic; that of New Rome was merely human or political, because of that city's position as head of the state. Nothing illustrates this better than the fact that since 1453 the very ground on which Chalcedon and the patriarchs of Constantinople so boldly and proudly based their claims has been swept away.

Canons 9 and 17 of this series, which gave to the see of Constantinople

an appellate jurisdiction,[144] may be taken as an introduction to, or preparation for, the present canon, and served no doubt as a warning to the papal legates as to what would likely take place before the dissolution of the council. It was during the absence of the papal legates that our canon was formulated and passed. The strong opposition which it called forth from them in the following and last session and its rejection by Leo I, resulted in its exclusion from many early collections of canons. It was renewed by the Trullan Synod in canon 36, and from that time on it has found a place in the Greek collections; later it was acknowledged also by some Latin collectors.[145]

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[144] Hergenröther, *Photius*, I, 74.

[145] Hefele-Leclercq, II, 815–26; Hergenröther, *op. cit.*, I, 74–89; Fortescue, *The Orthodox Eastern Church*, pp. 28–47; Harapin, *Primatus Pontificis Romani in Concilio Chalcedonensi et Ecclesiae dissidentes*, Quaracchi, 1923; Cobham, *The Patriarchs of Constantinople* (Cambridge, 1911), pp. 1–40; Schwartz, *Der sechste Nicaenische Kanon auf d. Synode v. Chalcedon*, Berlin, 1930.

THE FIFTH AND SIXTH GENERAL COUNCILS

SECOND AND THIRD COUNCILS OF CONSTANTINOPLE

History. The Fifth and Sixth General Councils, that is, the Second and Third of Constantinople, the former held in 553, the latter in 680, did not draw up any disciplinary decrees. Since the Orientals felt that both councils should be completed in this respect, Emperor Justinian II summoned a council in 692 to meet in the same city. It formulated no dogmatic decree, but merely drew up 102 disciplinary canons as a supplement to the last two general councils; whence it is called Quinisext (Concilium Quinisextum, Σύνοδος πενθέκτη), that is, Fifth-Sixth. It is generally known as the Council in Trullo, or Trullan Council, because it was held in a domed hall (*trullus*) of the imperial palace. It was attended by 211 bishops or representatives of bishops, all Orientals except one Basil of Gortyna in Crete who belonged to the Roman patriarchate and styled himself papal legate, though there is no evidence that he had received such a commission from Rome. The Orthodox Eastern Church has always regarded it and still regards it simply as a continuation of the Sixth General Council, and hence accepts it as ecumenical, adding its decrees to the dogmatic decrees of that council. In the West these canons have never been recognized. Many of them are nothing more than a verbatim repetition of earlier canons, and most of the new ones are but exhibitions of ill-feeling toward such Churches, especially the Western, not in disciplinary accord with Constantinople. Pope Sergius I (687–701) rejected them as *invalidi.* John VII (705–07) returned the copy that they sent him to sign; the space left for the pope's signature is still blank. Pope Constantine (708–15) seems to have adopted a *via media,* which was later expressed by John VIII (872–83) in his declaration that he "accepts all those canons that do not contradict the true faith, good morals, and the decrees of Rome." Ninety years earlier Adrian I (772–95) seems to have been less cautious, yet his position toward them was clearly a middle course. That the Seventh General Council (787) accepted these canons and spoke of them after the manner of the Orientals is not surprising, since it was attended almost entirely by Greeks.[1]

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[1] Hefele-Leclercq, *Hist. des Conciles,* III, 560–81; Fortescue, *The Orthodox Eastern Church,* pp. 94 ff. An exhaustive study of the *Quinisext* and its canons was made by Assemani and published in his *Bibliotheca Juris orientalis,* V (Romae, 1766), 55–348;

The Fifth General Council. The convocation of the Fifth General Council was brought about by the famous controversy concerning the Three Chapters, that is, (1) the person and writings of Theodore of Mopsuestia (d. 428); (2) certain writings of Theodoret of Cyrus (d. 458); and (3) the letter of Ibas of Edessa (d. 457) to Maris bishop of Hardaschir in Persia. The former was the teacher of Nestorius and may be called one of the originators of Nestorianism; the latter were strongly in sympathy with that heresy and openly defended it. In reality it was brought about by Emperor Justinian's fondness for dogmatizing and meddling in ecclesiastical affairs. The writings of Theodoret and Ibas had already been considered in the Council of Chalcedon, but the bishops at that time abstained from formally condemning them and even restored the authors to their sees after they had accepted and signed a formula of faith condemning Nestorius. Ever since he became sole emperor in 529, Justinian, seeing the security of the Empire threatened by religious divisions, sought to bring about religious unity, and, while his sincerity and good intentions cannot be questioned, his want of foresight and cautious observations at times led him into traps set for him by those whom he least suspected. When in 543 he issued a decree condemning Origenism and was considering further measures against its adherents, these through their leader, Theodore Ascidas bishop of Caesarea in Cappadocia, in order to divert his attention from them, persuaded him that Nestorianism continued to draw its vitality from the Three Chapters and suggested that their condemnation would facilitate the return of the Monophysites to the Church. The suggestion appealed to him at once, especially since he had for many years concerned himself about effecting the return of these heretics. The Monophysites entertained a particularly strong hatred against Nestorianism, and consequently against the three above-mentioned individuals, whose works they regarded as the source and bulwark of that heresy. The apparent toleration that they enjoyed served as a pretext for accusing the Church of Nestorianism, and, when in reply they were assured that the Church had condemned Nestorius as a heretic, they pointed to the writings of Theodore of Mopsuestia, his teacher, which had never been condemned. Moreover, they said, Theodoret of Cyrus and Ibas of Edessa had been restored to their sees by the Council of Chalcedon, not-

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cf. also Vol. I, 120 and 408 ff. A hundred years earlier, explanations of these canons were given by the Augustinian, Christian Lupus, a Louvain professor, in his work: *Synodorum generalium et provincialium decreta et canones* (1665–73). The commentaries of the twelfth century Greek commentators, Balsamon, Zonaras, and Aristenus, are given by Beveridge in his *Synodicon sive Pandectae canonum*, I (Oxonii, 1672), 151–283. Beveridge's own notes on the canons, *ibid.*, II, ii, 126–64. An English translation of the canons is given in *Nicene and Post-Nicene Fathers*, XIV (N. Y., 1900), 359–408.

withstanding the fact that both had been in complete sympathy with the teachings of Theodore and Nestorius, and the further fact that the letter of Ibas, instead of being condemned, had even received a favorable reception in the same council. Goaded on by the Origenists, the Emperor at the end of 543 or the beginning of 544 issued an edict condemning the Three Chapters. In it he attempted to uphold the authority of Chalcedon, which had declared Theodoret and Ibas orthodox. "If anyone assert," he declared, "that we have taken this course for the purpose of suppressing or setting aside the holy fathers who were assembled in council at Chalcedon, let him be anathema." It was the Emperor's intention to elevate the edict by means of the subscriptions of the bishops, East and West, to the dignity of a verdict of the universal Church. The Eastern patriarchs, aware that to sign would be to outlaw or at least to impair the authority of Chalcedon, subscribed the document under imperial compulsion. Mennas patriarch of Constantinople at first refused but finally subscribed on the expressed condition that the pope also subscribe; should he refuse to sign, his own signature was to be withdrawn. The patriarchs of Alexandria, Antioch, and Jerusalem signed when threatened by the Emperor with deposition, and their example was followed by nearly all of the Oriental bishops.

While in the East this opposition gradually collapsed, the West proved unyielding. Supported by the Western bishops, Pope Vigilius refused to approve or subscribe the Emperor's condemnatory edict for the same reasons as those on which the Orientals had at first based their opposition. To break this resistance, Justinian had the Pope forcibly conveyed to Constantinople, where he arrived in January, 547, firmly determined to make no concessions in the matter. The Emperor received him kindly and at first treated him with the greatest respect and consideration. This attitude Vigilius interpreted as a change of mind on the part of the Emperor in regard to the Three Chapters and then proceeded to excommunicate Mennas and the other bishops who had subscribed to the imperial edict. Soon, however, he was given to understand that that mind and heart remained unchanged. A series of discussions between him and the Emperor and some bishops soon convinced him that the majority of the Oriental bishops sided with the Emperor and that his own continued opposition would result only in a new division between the Eastern and Western Churches. In a number of conferences held with bishops who happened to be in Constantinople, seventy declared themselves against the Three Chapters. As a result, the Pope, on April 11, 548, gave his *Judicatum*, which was addressed to Mennas. In it he condemned (1) the person and all the writings of Theodore of Mopsuestia; (2) the letter of Ibas to Maris and all those who approved it; and (3) such writings of Theo-

doret of Cyrus as were against the true faith and against the anathematisms of St. Cyril. He upheld the authority of the Council of Chalcedon and nowhere in the document did he show any intention to detract in the least from its importance or to impair its authority. It was an effort of the Pope to satisfy both sides: the East by condemning the Three Chapters, and the West by upholding Chalcedon. But his action, aroused much discontent and bitter opposition in the West, where it was regarded as a most humiliating surrender to the civil power in matters ecclesiastical. It was, moreover, a gross injustice to the memory of men who had died long ago reconciled to the Church. The situation was further complicated and aggravated by the fact that the Latin bishops, including the Pope, being ignorant of Greek, were unable not only to judge for themselves the writings in question, but also to obtain an adequately workable grasp of the contemporary theological mind of the Greek Church. As a result of his action, Vigilius found that he had lost the support of the Latin bishops. Dacius bishop of Milan and Facundus bishop of Hermiana, in the African province of Byzacena, both in Constantinople at the time, broke off communion with him. So did the bishops of Dalmatia and Illyria, while those of North Africa excommunicated him till he had done penance. Under these circumstances Vigilius withdrew the *Judicatum* and reached an agreement with Justinian whereby no further steps *pro* and *con* should be taken till the matter could be decided by a general council. But the Emperor found the burden of the truce too much for him. Goaded on again by Theodore Ascidas, he issued in 551 in concurrence with many Greek bishops a new edict condemning the Three Chapters. The prospects of peace were now thrown farther into the background. The Pope's appeal to the Emperor to withdraw it and to the bishops not to accept it, fell on deaf ears. It was now no longer a question of the Three Chapters, but of the rights and independence of ecclesiastical authority. Realizing that his life was in danger, he fled to Chalcedon and there took refuge in the Church of St. Euphemia. Here, in January, 552, he issued a sentence of deposition against Theodore Ascidas and of excommunication against Mennas and other bishops. On February 5 he issued an encyclical letter to the whole world, justifying his conduct and describing the insults and indignities heaped upon him by the civil authority.

This prompt and determined action of Vigilius brought about an immediate turn of affairs. Theodore Ascidas, Mennas, and some other Oriental bishops, at the suggestion of the Emperor, sought reconciliation with him, being prepared to accept the four general councils and the letters of the popes, particularly those of Leo I. They withdrew all that had been done against the Three Chapters since the Emperor's first condemnatory

edict, sought his pardon for their opposition and misconduct, and requested his return to the imperial city. In August, 552, Mennas died and was succeeded by the monk Eutychius. The Pope having returned, the new Patriarch on January 6, 553, presented him his profession of faith and with other bishops urged him to call a general council. The council was convoked by the Emperor to be held in Constantinople. The Pope proposed that it should be held either in Italy or Sicily to enable the Western bishops to attend. This was the very thing that the Emperor wished to avoid, for he was aware that these bishops would side with the Pope against the condemnation of the Three Chapers. Hence he rejected the proposal and suggested a commission of delegates chosen from each of the five patriarchates. The Pope insisted on an equal representation from the East and West, or nothing. Since agreement on the subject was out of the question, the Emperor opened the council by his own authority on May 5, 553. It was presided over by Eutychius. There were present in the beginning 157 bishops, and toward the end 164, all Orientals, except six Africans in the first session and eight in the last, though there were other Western bishops in Constantinople at the time. Altogether eight sessions were held. The Pope was invited to attend, but refused, chiefly because the council did not have his sanction. Besides, none of his predecessors had ever participated personally in an Eastern council. Then, the fact that it was composed entirely of Eastern bishops went counter to his stipulations. And last but not least, he feared personal violence. While the council was thus engaged, Vigilius (May 14) sent to the Emperor his first *Constitutum*, in which he modified his decision regarding the Three Chapters as set forth in his *Judicatum*. It was signed by himself and sixteen bishops, mostly Western. In it he condemned the writings of Theodore of Mopsuestia, but refrained from condemning his person, and also forbade others to do so, for the reason that neither Ephesus nor Chalcedon had condemned him and it is not the custom of the Church to condemn the dead. The writings of Theodoret and the letter of Ibas he did not condemn because Chalcedon had not condemned them, and both had, moreover, subscribed at that council to an anathematization of Nestorius. He deemed it sufficient to condemn in a general way all writings that are opposed to the true faith, whoever the authors may be. In conclusion he forbade all clerics of whatever rank to change the decisions of Chalcedon by addition or subtraction, or to teach, write, or publish anything contrary to the present *Constitutum*, or to agitate anew, after this decision, the question of the Three Chapters. This energetic action naturally proved extremely offensive to the Emperor, who in the seventh session gave vent to his feelings by ordering the council to break off communion with the Pope on the ground that, having made himself a *particeps* in the

heresy of Nestorius by upholding the Three Chapters, he severed himself from the Church. But, while repudiating the Pope, the council had no desire to break off communion with the Apostolic See, and thus originated the famous distinction between the *sedes* and *sedens*, which was later to assume the proportions of a dogma in the system of Gallicanism. Thus the council which till then had carried on without papal sanction, now became openly schismatic. In the last session (June 2, 553) the Three Chapters were condemned. The document consisted of two parts. First was a statement of the transactions of the council; this was followed by a condemnation of the Three Chapters and of all who had upheld them or would in the future uphold them. The second part contained the fourteen anathematisms which differed but little from the thirteen published by Justinian in his second edict (551).[2]

After the dissolution of the council the Emperor set about to secure its recognition by those bishops who did not attend it, the most important of whom was, of course, the Pope. He encountered little opposition in the East, but the Western bishops, in the face of deposition, exile, and violence, put up a determined and united front against subscribing to its decisions. The Pope was isolated and deprived of his advisers. One of his deacons was banished to Egypt, and the other two were imprisoned. Vigilius, worn out and exhausted by imprisonment and ill-treatment, at last yielded to the Emperor's demands. In a letter to Eutychius (December 8, 553) *pro confirmatione quintae synodi oecumenicae*, he condemned the Three Chapters in the sense of the council and nullified whatever had been done by him and others to uphold them.[3] In a second *Constitutum* (February 23, 554),[4] addressed most probably to the Latin bishops and answering the objections of those who defended the Three Chapters, he repeated the condemnation contained in his letter to Eutychius. This action of the Pope stirred up bitter opposition in the West, gave rise to numerous local schisms, and caused many bishops to break off communion with him. It was only gradually that the council acquired its ecumenical character. Pelagius, the successor of Vigilius, though at first opposed to it, finally accepted it. Gregory the Great in particular succeeded in bringing back to the Church the dioceses that had cut themselves off from the Holy See, though one see, Aquileia, continued in schism till the year 700. So far as the Emperor's hobby, the return of the Monophysites to the Church, was concerned, the condemnation of the Three Chapters proved of little effect. After eight years of unhappy residence in the Eastern capital, in the spring of 555 Vigilius was able to begin his return journey to Rome,

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2 Denzinger, *Enchiridion*, nos. 213–28.
3 Migne, *PL*, LXIX, 122–28.
4 *Vigilii papae constitutum pro damnatione trium capitulorum*, *PL*, LXIX, 143–78.

which, however, because of his death at Syracuse, he was not destined to reach.

In point of doctrine the unfortunate controversy regarding the Three Chapters is of no interest. So far as the Church was concerned, those Chapters might just as well have been left uncensured, for she gained nothing from their condemnation. The Monophysites rejected Chalcedon then and have continued to reject it to our own day. Vigilius had good grounds for defending the Chapters; because, after all, their condemnation was sought not to crush a heresy, but to conciliate heretics who refused to accept Chalcedon. Then, no good precedents existed for condemning the memory of men who had died over a century before, reconciled to the Church. St. Cyprian had erred in regard to the rebaptism of heretics, yet there was no thought of condemning him. If Vigilius and the Western bishops saw in the condemnation a weakening of the authority of Chalcedon, they were mistaken. This fact can be explained by a lack of understanding of the questions at issue from an Oriental viewpoint, and by their inability to inform themselves of the contemporary Oriental theological mind. When we consider the time and atmosphere in which those writings originated, also the indefinite terminology that prevailed at the time of the Fourth General Council, there was no need for condemnation, especially since both Theodoret and Ibas had publicly and formally repudiated Nestorianism. In all probability this was the position taken by the bishops assembled at Chalcedon. The restoration of these two men to their sees by the council certainly did not mean a conciliar approval of their writings. If, on the other hand, these writings were judged on their own merits, independently of the foregoing considerations, and in the light of a more clearly defined terminology, then they certainly merited condemnation; and such seems to have been the position of the present council. There can, then, be no difficulty here in the matter of infallibility.

As to Vigilius, doctrinally he was always correct, though by his wavering position he has left himself open to just criticism. His change of position was dictated by the indecency and inopportuneness of the measures proposed and by the fear that the authority of Chalcedon would thereby be weakened. His first *Constitutum*, in which he took the same position as the Council of Chalcedon, may reasonably be assumed to have been intended merely as a disciplinary measure, not as a definitive declaration. When finally the council securely maintained the authority of Chalcedon, he simply reaffirmed his former position.[5]

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[5] Mansi, IX, 157 ff.; Hefele-Leclercq, III, 1–156; Kirsch, *Die Kirche in d. antiken griechisch-röm. Kulturwelt*, pp. 650–62; Tixeront, *History of Dogmas*, III, 127–44; Otten, *Manual of the History of Dogmas*, I, 415–21; Diekamp, *Die origenistischen Streitigkeiten im VI Jahrh.*, Münster, 1899.

The Sixth General Council. One of the principal causes of the ecclesiastical disturbances in the East was the constant meddling of the civil authority in the affairs of the Church. Such interference by Emperor Justinian brought about the needless and unhappy controversy concerning the Three Chapters and their condemnation by the preceding council. A similar desire on the part of Emperor Heraclius to effect a return of the Monophysites of Syria and Egypt to the Church, brought about the Monothelite controversy and ended in the condemnation of that heresy by the Sixth General Council.

Monothelitism, its roots going back to Apollinarianism, was an after-effect of Monophysitism, just as the Three Chapters were an after-effect of Nestorianism. The Council of Chalcedon had defined two perfect and distinct natures in Christ united in one Person. By implication, not indeed directly and explicitly, this definition declared also a duality of wills and operations in Christ, since these are but a consequence, following from the duality of natures. The question as to whether there are in Christ one or two wills, one or two operations, was not a new one, and, had it been left in the sphere of theological speculation and discussion, it would so far as the Church was concerned have been regarded simply as an inconsequential agitation within Monophysite ranks. But political circumstances drew it out into the open. The people of Syria and Egypt were Monophysites. The latter especially, greatly weakened by the dissensions of the heretics among themselves and their bitter opposition to the Church, invited invasion by hostile neighbors. In his war in defense of the Empire against the Persians and Arabs, the Emperor was anxious to harmonize these various heretical factions and bring about their reunion with the Church. As a basis or formula of conciliation with the Church on which he thought both sides could agree, he proposed, by way of concession to the Monophysite tenet of one nature, the theory of one will, one operation in Christ. In this he was supported by Sergius patriarch of Constantinople who, in reply to an inquiry on that point by Cyrus bishop of Phasis in Armenia, gave as his authority a letter said to have been written by Mennas, one of his predecessors, to Pope Vigilius, citing the authority of several fathers in favor of one will and one operation in Christ and approved by that Pope. This letter proved later to be a forgery, perpetrated perhaps by Sergius himself. At any rate, Cyrus became a convert to the doctrine of one will in Christ and was soon after (631) promoted to the vacant patriarchate of Alexandria with the understanding that he effect a reunion of the heretics with the Church. Supported by the Emperor and Sergius, the mission entrusted to him proved successful beyond expectation, so that the Patriarch of Constantinople could say that nearly all Egypt, the Thebaid, and Libya proclaim the praises of St. Leo and the Council of Chalce-

don. A reunion was effected also with the Monophysite Armenians and with Anastasius, the Monophysite patriarch of Antioch. The Monophysites apparently had won a victory, for in their view the acceptance of one will was equivalent to the recognition of one nature in Christ. Rightly could they boast, Leo and Chalcedon have come to us, we did not go to them.

While matters were thus proceeding smoothly, opposition to the formula of conciliation arose suddenly in 633 from an unexpected quarter. Sophronius, a Palestinian monk conspicuous for his piety and theological learning, sojourning in Alexandria at this time, on examination found the formula to be heretical and so informed Cyrus, entreating him to condemn it. This protest to Cyrus and a similar one to Sergius were without avail, the latter in reply advocating a policy of discreet silence on the matter. He asserted that, although one will in Christ is undoubtedly the right doctrine, simple people might easily be scandalized at the expression. Sergius thought it best to have the Pope on his side, and so wrote to Honorius explaining his side of the question and recommending the policy of silence. When Sophronius became patriarch of Jerusalem in 634, he wrote a lengthy synodal letter setting forth the orthodox Trinitarian and Christological doctrine on the question at issue. This letter he sent to the Pope. Honorius in his replies reproved Sophronius and commended Sergius for rejecting the expression of two operations. All unconscious of the fact that he was being led into a trap, he almost cheerfully endorsed the recommendations of Sergius, though for the heretical formula of Cyrus he had not a word of reprobation.[6] But while Sergius recommended a discreet silence in the matter to others, he had no intention of imposing it on himself. The Pope's attitude was a source of great encouragement to him. The effect of Sophronius' synodal letter had to be nullified or at least palliated. To do this, he prepared at the Emperor's suggestion and issued in 638 the famous *Ecthesis*, with the signature of the Emperor attached. This is a profession of faith, as he said, in accordance with the five general councils. In it he, that is, the Emperor, forbids the use of the expression one and two operations, maintains one will in Christ, and declares—a declaration probably based on the letter of Honorius—that it is in complete harmony with the teaching of the Apostolic See. In conclusion he calls upon all Christians to accept this profession of faith without alteration. Two synods held at Constantinople, one under Sergius in 638, the other in 639 under Pyrrhus his successor, approved the *Ecthesis*. With this approval it was an easy matter to induce the majority of the bishops of the East to accept the new profession of faith, especially since Sophronius had already died and was succeeded in the patriarchate by the Monothelite, Sergius

[6] Denzinger, nos. 251–52.

of Joppe. Thus the four Eastern patriarchates were now separated from Rome and were in the hands of the Monothelites. Cyrus ruled in Alexandria, Macedonius in Antioch, Sergius in Jerusalem, and Pyrrhus in Constantinople.

In the West, however, the *Ecthesis* encountered strong opposition. The Emperor's failure to win the popes over to his views must, or at least should, have convinced him that Rome, unlike the Eastern episcopate, does not cowardly and slavishly subscribe to abusive and unorthodox doctrines couched in imperial edicts. Pope Honorius died in 638 and was succeeded by Severinus who, though he survived his consecration (640) only two months, found time to condemn the *Ecthesis*. His successor, John IV, assembled a Roman council which formally condemned the doctrine of one will as heretical, and defended Honorius against the charge of heresy.[7] The decision of the council was transmitted to Constantinople. When the Emperor learned of the condemnation, he at once repudiated the *Ecthesis* and put the entire blame for it on Sergius. Heraclius died in 641 and was succeded by his two sons, Heraclius Constantine and Heracleon. The former died suddenly three months later, of poison, it was suspected, administered by his stepmother Martina, who wished her own son Heracleon to be sole ruler. Six months later Heracleon and Martina were first mutilated and then exiled, while Pyrrhus, who was implicated in the death of the elder son, fled to Africa. The imperial power now fell into the hands of Constans II, and Pyrrhus was succeeded by Paul II, a priest of Constantinople and likewise a Monothelite. Nothing could be expected from him, so Pope Theodore, who in 642 succeeded John IV, deposed him. The new Emperor, a supporter of Monothelitism, resented all Western interference in the matter. To put an end to the controversy, he withdrew the *Ecthesis* and at the suggestion of Paul published in 648 a new edict known as the *Typus*, a disciplinary measure in which he imposed under the severest penalties strict silence on both parties regarding the matter under discussion. Monothelitism, that is, heresy, and Dyothelitism, orthodoxy, were placed on an equal footing. It was a suppression of orthodox doctrine. He adopted drastic measures to compel the bishops of the East and West, orthodox and heterodox, to subscribe to the document. Pope Theodore was succeeded in 649 by Martin I, one of the noblest and most tragic figures in the catalogue of Roman pontiffs. In October of the same year he held a synod in the Lateran, which was attended by 105 bishops. Its purpose was to subject Monothelitism to a thorough examination. Five sessions were held. In the last session the bishops drew up twenty canons defining the orthodox doctrine on the two wills in Christ.[8] The eighteenth anath-

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[7] *Id.*, no. 253.

[8] *Id.*, nos. 254–74.

ematizes Sergius, Pyrrhus and Paul of Constantinople, Cyrus of Alexandria, Theodore of Pharan in Arabia, the *Ecthesis*, and the *Typus*. This bold and energetic action of the Pope entailed dire consequences for him. His great crime was that he condemned the *Typus* instead of subscribing to it. As Rome was still under imperial rule, Constans lost no time in taking revenge. He sent Theodore Calliopas as exarch to Rome with instructions to arrest the Pontiff and bring him to Constantinople. After languishing in prison for six months in the imperial city where he was subjected to the grossest insults and indignities, he was exiled to Cherson in the Crimea, where he died in 655.

One of the first acts of the new Pope, Eugene I, was to send two legates to Constantinople in an effort to come to an understanding with the Emperor, but they surrendered to Greek deception and accepted three wills in Christ, two natural wills and one hypostatic will. In 657 Eugene died; under his three immediate successors nothing was done in the matter. In 668 Constans II was assassinated while tarrying in Sicily. He was succeeded by Constantine IV (Pogonatus) who, although he took no steps to suppress the heresy, was also not inclined to enforce the provisions of the *Typus*. He was, however, favorably disposed toward the cause of orthodoxy. In 678, after he had concluded an advantageous peace with the Saracens, he set about to put an end to the controversy that had disrupted the Empire for so many years. He communicated with Pope Agatho, requesting him to send representatives to Constantinople with a view to establishing conciliar action to bring about ecclesiastical peace between Rome and the imperial city of the East. Before complying with the request, the Pope wished to have the decision of the Western Church and the orthodox doctrine set in definite form in preparation for the Eastern council. For this purpose he ordered synods to be held throughout the West and he himself assembled one in Rome (Easter, 680) which was attended by 125 bishops. On leaving, his legates were provided with two letters to the Emperor, one in the name of the Pope, the other, the synodal letter of the Roman council signed by the Pope and the 125 bishops.[9] In import both are substantially the same. They set forth the faith of the Western Church regarding the two wills and operations in Christ. When the legates arrived in the Eastern capital, the Emperor immediately called together the bishops of Constantinople and Antioch. He did not include in his convocation the bishops of Alexandria and Jerusalem for the reason that, since these two patriarchates were at that time in the hands of the Mohammedans, he could not expect any bishops from there. It was probably for this reason also that he had no intention of making the assembly a general council. But when at the opening session representatives from

[9] *Id.*, no. 288.

these two patriarchates were present, it developed into the Sixth General Council.

The council opened on November 7, 680, and came to a close September 16, 681. There were altogether eighteen sessions. The council was held in a hall of the imperial palace under a large dome or cupola, whence it is sometimes referred to as the First Trullan Council. It was presided over by the papal legates and was attended in its earlier stages by less than a hundred bishops, in the last session by 174 bishops or their representatives. The Emperor was present during the first eleven sessions but did not interfere in the doctrinal discussions. The eighteen sessions were taken up largely with an examination of the Scriptural and patristic passages relative to the question at issue. The leaders of the Monothelite party were Macarius patriarch of Antioch, his disciple (a monk named Stephen), and the two bishops Peter and Solomon, of Nicomedia and Claneus respectively. After the discussion in the seventh and tenth sessions of the patristic passages that had been collected and prepared by the papal legates in support of Dyothelitism, George patriarch of Constantinople (a Monothelite sympathizer) and his bishops yielded to the evidence of the orthodox teaching. In the thirteenth session (March 28, 681) the council anathematized the chief Monothelite heretics, Sergius, Pyrrhus, Paul and Peter of Constantinople, Cyrus of Alexandria, and Theodore of Pharan, and then added: "We decide that Honorius also, who was pope of Old Rome, be with them cast out of the holy Church of God and be anathematized with them, because we have found in his letter to Sergius that he followed his opinion in all things and confirmed his pernicious teachings." In the end Macarius of Antioch also was anathematized and deposed for his refusal to accept the decision of the council. In the last session, which was attended by the Emperor, the council drew up its dogmatic decree setting forth the orthodox teaching and defining two wills and two operations in Christ.[10] This decree contains the decisions of the five preceding general councils and condemns the *Ecthesis*, the *Typus* and the leading Monothelite heretics, including Pope Honorius.[11] It was subscribed to by

[10] *Id.*, nos. 289-93.

[11] The famous letter of Honorius to Sergius (Mansi, XI, 538-43) has been made much of in the past by representatives of Gallicanism and all, especially Protestants, who immediately before and after the Vatican Council opposed papal infallibility. The letter, it is true, was not a private one, yet it would be absurd to regard it as an *ex cathedra* pronouncement. It defined nothing and condemned nothing. It contains the orthodox doctrine but unfortunately expresses it in terms that are misleading. Its orthodoxy was defended by John IV, Honorius' almost immediate successor, and by St. Maximus who took a personal and very active part in the controversy. Nor can it be maintained that the council fell into a dogmatic error when it condemned Honorius as a heretic, for it condemned him as a heretic, not in the strict and current acceptation of the word, but because he approved the contradictory hush-up policy of Sergius. This was also the attitude of Leo II, who condemned him not for what he did but rather for what

the papal legates, 174 bishops or their representatives, and the Emperor. In a letter to the Pope, the bishops asked for his confirmation of the acts. Agatho, however, had died during the council and was succeeded by Leo II, who confirmed (683) the decisions against Monothelitism, but refused to recognize the condemnation of Honorius as a heretic. He did indeed condemn him, but only because he "neglected to sanctify this Apostolic Church with the teaching of Apostolic tradition, but by profane treachery allowed its purity to be polluted."[12] With this decision of the Sixth General Council, the Christological controversies of the Eastern Church came to an end.[13]

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he neglected to do. Instead of extinguishing by the Apostolic authority, said Leo, the flame of heretical teaching in its beginning, he fostered it by his negligence. For a fuller treatment of the subject, cf. the article "Honorius" in the *Catholic Encyclopedia* and the bibliography there given.

[12] Mansi, XI, 731.

[13] *Id.*, XI, 189 ff.; Hefele-Leclercq, III, 317–515; Owsepian, *Die Entstehungsgeschichte d. Monothelismus nach ihren Quellen geprüft u. dargestellt*, Leipzig, 1897; Gelzer, "Abriss d. byzantinische Kaisergeschichte," in Krumbacher, *Gesch. d. byzant. Literatur*, München, 1897; Kirsch, *op. cit.*, pp. 671–90; Tixeront, *op. cit.*, III, 153–79; Otten, *op. cit.*, I, 422–32; "Martin I und Maximus Confessor," in *Hist. Jahrbuch d. Görresgesellschaft*, XXXVIII (1917), 213–36, 429–58.

THE SEVENTH GENERAL COUNCIL (787)

Second Council of Nicaea

History. The Seventh General Council was held in 787 at Nicaea in Bithynia (Nicaenum II). It condemned Iconoclasm (image-breaking) and defined the kind of worship that may reasonably and lawfully be given to images. The civil rulers, at first goaded on by a few disgruntled bishops, later acted more or less on the conviction that the veneration of images was nothing but a recrudescence of pagan idolatry. While many of the Eastern bishops surrendered to imperial fanaticism, some hypocritically to escape imprisonment, exile, and death, the West faced the heresy with a determined and united front.[1]

When Empress Irene, known to be in favor of images, became regent for her son Constantine VI, who was but nine years of age when his father, Leo IV, died in 780, she lost no time in restoring what had been destroyed by the Iconoclast emperors. In due course of time images were restored, monasteries reopened, and exiled bishops recalled to their sees. Paul IV, patriarch of Constantinople, resigned and retired to a monastery to expiate his weakness in binding himself under oath never to restore images. He was succeeded by Tarasius, a layman and imperial secretary, who likewise was a supporter of image-veneration. Both Tarasius and Irene repudiated the decisions of the Iconoclast synod of Constantinople held in 754 and sent letters to Pope Adrian I acknowledging the primacy of Rome and imploring him to unite with the East in a general council that should nullify the work of that synod and bring the matter in dispute to a final settlement.[2] The Pope's reply, two long letters, one to Irene, the other to

[1] Regarding the origin of the heresy and the events leading up to the council, cf. Hefele-Leclercq, *Hist. des Conciles*, III, 601–740.

[2] This synod (*conciliabulum*) was summoned by the Iconoclast Emperor Constantine V (Copronymus, 741–75) for the purpose of outlawing images, and was to count as the Seventh General Council. It was held in the palace known as Hieria, which was located opposite Constantinople on the Asiatic side of the Bosporus between Chrysopolis and Chalcedon. It was attended by 338 bishops and was presided over by Theodosius of Ephesus and Pastilias of Perge, Anastasius the patriarch of Constantinople having died the year before. Rome, Alexandria, Antioch, and Jerusalem did not send representatives, for it was well known that the synod would be under the absolute control of the Emperor and that the bishops were assembled merely to carry out his commands, which they servilely did. It declared all images idols, an invention of the pagans, and image-worshipers idolators, adorers of wood and stone. A special anathema was pronounced against the three chief defenders of images, Germanus former patriarch of Constantinople, John Damascene, and a monk, George of Cyprus. Hefele-Leclercq, III, 693-709. The acts of the synod are given in Mansi, XIII, 205–363.

the Patriarch, was friendly but cautious. He was highly enthusiastic over the idea of a general council and promised his whole-hearted co-operation, but against the Eastern capital he had grievances to which he drew attention in his letters. There was first the uncanonical elevation of a layman, Tarasius, to the patriarchate of Constantinople; secondly, there was the retention by that patriarch of the title *Ecumenical* or *Universal Patriarch*, a prerogative that belongs only to the successor of St. Peter; and lastly, there were the provinces withdrawn from the Roman patriarchate by Leo the Isaurian. With his letters he sent two legates, both named Peter, one an archpriest, the other the abbot of St. Saba near Rome. The council was convoked by Irene and Tarasius to meet at Constantinople. The patriarchates of Alexandria, Antioch, and Jerusalem were so completely cut off from Christendom by the Mohammedans that the summons did not reach them. Two monks, however, Thomas, abbot of an Egyptian monastery, and John of Antioch appeared with letters of credence from their communities to Tarasius and the fathers of the council, assuring them of the orthodoxy of the three patriarchs in the matter of image-veneration. From the fact that their names appear among the first in the lists of signatures to the decrees of the council, we may conclude that they acted in the capacity of legates for them.

The council was opened by Tarasius in the Church of the Apostles at Constantinople in August, 786, but was frustrated by the intrusion and violence of the Iconoclast soldiers who for some days had been gathering in the neighborhood. The Empress withdrew the mutinous and anticlerical troops and replaced them by others more reliable. The council was then transferred to Nicaea, where it was opened September 24, 787, in the Church of St. Sophia. The bishops and representatives of bishops in attendance numbered about 330. All of these were subjects of the Byzantine Empire with the exception of the papal legates and the two monks representing the patriarchs of Alexandria, Antioch, and Jerusalem. The papal legates were present throughout the council. In the acts they are always named first; then Tarasius and after him the two Oriental monks, Thomas and John, representing the three above-mentioned Eastern patriarchs. Tarasius conducted the sessions, in all likelihood because the papal legates were not familiar with the Greek language. The Empress sent two representatives; but, as they were purely honorary, they took no part in the discussions. Eight sessions were held. In the first session, after the reading of several official documents, ten Iconoclast bishops read their recantations. In the second session, the Pope's letters to Irene and Tarasius were read, but the portion of Adrian's letter to Irene relative to the papal grievances was omitted. The question of image-veneration was taken up and discussed at several sessions. In the sixth, the doctrines of the Iconoclast

synod of 754 were disproved and condemned. The most important work of the council was accomplished in its seventh session, when the symbol or dogmatic decree was drawn up. Not only the figure of the cross, but also holy images, whether made in colors or mosaics or other materials, are to be portrayed publicly in the churches, on sacred vessels and vestments, on walls and pictures, in houses and byroads; that is, images of our Savior, of His Blessed Mother, of the angels and saints and holy men. For when they are seen in their pictorial forms, people who view them are ardently lifted up to the memory and love of the originals and induced to give them respect and worshipful honor, but not real adoration, which according to our faith is due only to the divine nature. Offerings of incense and lights are to be given to them as to the figure of the cross, to the holy Gospel-books and to other sacred objects (relics) in order to do them honor, as was the pious custom of ancient times. For honor paid to an image passes on to its prototype; he who worships (venerates, ὁ προσκυνῶν) an image, worships (venerates, προσκυνεῖ) the reality of him who is painted in it.[3]

Before concluding the session, the fathers of the council drew up twenty-two disciplinary canons. As some of these are very verbose, we will content ourselves with giving a summary of them. The last session was held on October 23, 787, in the Magnaura Palace (*domus magna aurea*) at Constantinople in the presence of Irene and her son. After the acts had been read, they were signed by all the members of the council and also by the Empress and the Emperor.

Although the question of images was thus disposed of in the East, at least temporarily, dark clouds began to gather in the West. Whatever was the attitude of Charlemagne and his bishops toward images before the Seventh General Council, this much is certain, that attitude assumed a definite shape after the council. The bishops of the Frankish kingdom not only refused to accept the decisions of the council, but formally condemned them in a synod held at Frankfort (794) for advocating, as these bishops thought, an absolute adoration of images.[4] The occasion of the trouble was a faulty translation of the acts that Pope Adrian had sent to Charlemagne in 788. The bishops objected to the decrees of the council on the ground that their people had but recently been converted from idolatry, and they did not care to recognize anything that might lead them to return to it. It is quite possible that the bishops may have misunderstood the significance of certain Greek expressions, because the translation was a very literal one, yet we must not overlook the fact that in France not only absolute worship but even every kind of relative worship was denied to sacred images. And other reasons existed for this opposition. Charle-

[3] Denzinger, *Enchiridion*, no. 302.
[4] Hefele-Leclercq, III, 1045–60; *id.*, III, Appendix VII.

magne at the time was angry with the Pope and angry with Irene. Angry with the former because he appeared to favor the Byzantine policy, and angry with the latter because she had deceived him. This malicious and disgruntled mental feeling is clearly evidenced throughout the "Caroline Books." It was, therefore, only gradually and after a long correspondence between the Frankish bishops and the Holy See, that is, at the end of the ninth or the beginning of the tenth century, long after the Eighth General Council (869), that the decisions of the present council were accepted by France. The former had confirmed the decisions of the latter in the matter of images, hence no one could reject the latter without rejecting also the former.[5]

CANON I

Summary. The following canons, recognized by the council, shall be observed by all clerics: those of the Apostles, of the six ecumenical councils, of the local synods, and those of the holy fathers.

***Text*. Clerics shall observe the holy canons, and we recognize as such those of the Apostles and of the six ecumenical councils; further, those drawn up by the synods locally assembled to promulgate those of said ecumenical councils, and the canons of our holy fathers. For all these being enlightened by the same Spirit, defined such things as were expedient. Accordingly, those whom they anathematized, we likewise anathematize; those whom they deposed, we also depose; those whom they rejected, we also reject; and those whom they delivered over to punishment, we subject to the same penalty.**

Comment. Unlike the West, which admitted only fifty Apostolic canons, the fathers of the council, in conformity with Greek usage, recognized eighty-five. Moreover, the wording of the canon clearly indicates that they attributed these canons to Apostolic origin, conformably to the Trullan Synod (canon 2) and to the prevailing opinion among the Greeks. In like manner, when they speak of the canons of the six general councils, though as a matter of fact only the first four promulgated disciplinary canons, they must be understood to follow the Greek custom, which, as was pointed out above, regarded the Trullan or Quinisext Synod as ecumenical and added its 102 canons to the decrees of the Sixth General Council.

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[5] Mansi, XII, 951 ff.; Hefele-Leclercq, III, 1045–60; Tixeront, *History of Dogmas*, III, 421–67; Otten, *Manual of the History of Dogmas*, I, 476–88; Schwarzlose, *Der Bilderstreit. Ein Kampf der griechischen Kirche um ihre Eigenart u. ihre Freiheit*, Gotha, 1890; Bréhier, *La querelle des images*, Paris, 1904; Gasquet, "Charlemagne et l'impératrice Irène," in *Études byzantines. L'empire byzantin et la monarchie franque*, Paris, 1888, pp. 251–86; Martin, *A History of the Iconoclastic Controversy*, London.

Following canon 2 of the Trullan Synod, four classes of canons are enumerated: (1) those of the Apostles; (2) those of the six ecumenical councils; (3) those of the local councils that promulgated the decrees of the general councils, and (4) those of the fathers of the Church. It is not easy to say what local councils are here intended. If we follow canon 2 of the Trullan Synod, which the present council no doubt had in mind, we have the following list: Ancyra, Neocaesarea, Gangra, Antioch, Laodicea, Sardica, Carthage (?), Constantinople (394), and Alexandria (399). Again, the same synod lists the following fathers on whose canons (that is, decretal letters) it set its seal: Dionysius and Peter of Alexandria, Gregory of Neocaesarea (Thaumaturgus), Athanasius of Alexandria, Basil of Caesarea in Cappadocia, Gregory of Nyssa, Gregory of Nazianzus, Amphilochius of Iconium, Timothy, Theophilus, and Cyril of Alexandria, and Gennadius of Constantinople.

CANON 2

Summary. Everyone who is raised to the rank of a bishop must know the psalter by heart. The metropolitan shall inquire whether he is inclined to read diligently or cursorily the sacred canons and the sacred Scriptures, and whether he lives according to the commandments of God, and also teaches the same to the people. Otherwise he shall not be ordained.

Text. **Everyone who is to be elevated to the rank of the episcopate, shall know the psalter by heart, so that from it he may admonish and instruct all the clerics subject to him. The metropolitan shall inquire carefully whether he is inclined to read diligently or cursorily the sacred canons, the holy Gospel, the book of the divine Apostle (the Pauline epistles) and all the other holy Scriptures, and whether he lives according to God's commandments and also teaches the same to his people. For the very life of our priesthood are the messages that have been divinely delivered to us, that is, the true science of the divine Scriptures, as Dionysius the Great (the Areopagite?) says. But if he be not inclined so to do and teach, let him not be ordained. For God says by the prophet, "Because thou hast rejected knowledge, I will reject thee, that thou shalt not do the office of priesthood to me" (Osee 4: 6).**

Comment. In the early ages of the Church not only the clergy but also the lay people learned the entire psalter by heart and were in the habit of reciting it while about their work. This memorizing was frequently begun and completed at an early age. Replying to Gaudentius who had sought advice in the matter of bringing up his infant daughter Pacatula, St. Jerome said: "Reward her for singing psalms that she may love what she has to learn." And in another place of the same letter he advises: "She

should until she is grown up commit to memory the psalter and the books of Solomon."[6] Gradually, however, this custom fell into desuetude among the laity, but its recitation and meditation thereon were imposed upon the clergy, monks, and nuns, who are in a special manner consecrated to the service of God. From this discipline arose the appointment of the canonical office, which imposes the obligation of reciting the psalms at certain intervals of time. The council requires the metropolitan to examine carefully the candidate for the episcopate to insure that he possesses the necessary fitness and qualifications for that office. The canonical examination with which the ceremony of the consecration of bishops begins, is obviously a relic of this early discipline.[7]

CANON 3

Summary. Ecclesiastical appointments made by princes are invalid.

Text. **Every election (appointment) of a bishop, priest, or deacon made by princes is invalid, according to the canon (Apost. canon 31). For he who is elevated to the episcopate must be chosen by bishops, as was decreed by the holy fathers of Nicaea (canon 4).**

Comment. The council in this canon did not condemn the right or privilege of nominating to a vacant ecclesiastical benefice, a right which Catholic kings and princes have enjoyed frequently and in many countries, but rather that autocratic choice and intrusion of persons into ecclesiastical offices, a privilege which they had arrogated to themselves under the title of "domination."

CANON 4

Summary. Any bishop who extorts gold, silver, or anything else from clerics or monks under his jurisdiction, shall upon conviction be suspended or excommunicated as a transgressor of the law of God.

Text. **Under no circumstances shall a bishop for the sake of filthy lucre demand under false pretenses gold, silver, or other gifts from bishops, clerics, or monks who are subject to his jurisdiction, or close the churches so that they may not celebrate therein. If anyone is found and convicted who for the purpose of extorting money or any other gift, or who from personal feeling has suspended from the ministry or excommunicated any cleric subject to him, or has**

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[6] *Epist*. CXXVIII, 1, 3a.

[7] The subject matter of this canon received not a little attention by Western synods both before and after this council; cf. Toledo (653), canon 8, Mansi, X, 1218; Châlons-sur-Saône (813), canon 1, Mansi, XIV, 93; Coyaca (1050), canon 5, Mansi, XIX, 788; Gratian, *Dist*. XXXVIII.

closed his church so that the divine service may not be celebrated therein, let him be subjected to the same punishment that he devised for others, so that the evil that he inflicted on others may return on his own head as a transgressor of the commandments of God and the precepts of the Apostles.

CANON 5

Summary. Those who attribute their ordination to their generosity and despise those who without any largess were chosen by reason of their virtues, are to take the lowest place in their order. Failure to amend shall be followed by punishment. Those who secured their ordination by means of gifts are to be excommunicated.

Text. With regard to those who pride themselves on having been ordained by reason of their generosity and openly despise those who without any largess have been chosen by the Holy Ghost by reason of their virtuous life, we decree that they take the lowest place in their order, and if they do not amend (that is, lay aside their pride), they shall be punished with a fine. If it be established that anyone has given money at any time as a price for ordination, let him be dealt with according to the Apostolic canon (30) and the canon of Chalcedon (2). Both the one ordaining and the one ordained shall be deposed and excommunicated.

Comment. Only the second part of this canon deals with simony. The first part considers the case of those who, on account of their many benefactions to churches and the poor, were, in recognition of their charitable deeds, elevated to the clerical state (without simony), but now, filled with pride, look with disdain on those clerics who did not or could not exhibit a similar generosity.

CANON 6

Summary. A synod shall be held once a year in each province for the correction of abuses and the consideration of important matters. Should any prince hinder compliance with it, he shall be excommunicated. Any metropolitan failing to observe this canon, shall be subject to the canonical penalties. A metropolitan who exacts anything from a bishop who attends, shall restore fourfold.

Text. There is a canon which says that twice a year in each province the canonical inquiries shall be made in the assembly of the bishops (Nic., canon 5), but on account of the hardships which those who attend had to undergo in their journeys, the holy fathers of the Sixth Council (that is, the Quinisext) decided that once each year a synod should be held in each province and matters that are amiss corrected (canon 8). This latter canon we now renew. Should any prince hinder compliance with it, he shall be excommunicated. If any metropolitan without reasonable excuse fails to observe this

canon, he shall be subject to the canonical penalties. The assembled bishops shall be solicitous for the observance of the commandments of God, because compliance with them brings its rewards. The commandment is the lamp, and the law is the light, and trial and discipline are the way of life. The metropolitan is not permitted to demand any of the things that a bishop brings with him, whether it be a horse or anything else. If he be convicted of doing this, let him restore fourfold.

CANON 7

Summary. A bishop who in future is found consecrating a church without relics, shall be deposed.

Text. As every sin has other sins following in its wake, so upon the heels of the heresy of the (Iconoclasts) traducers of the Christians, there followed other impieties. Not only did they remove the venerable images from the churches, but they also brought to naught other customs which we must now restore and maintain. We decree, therefore, that churches which have been consecrated without relics of the martyrs, such relics shall now be placed in them with the accustomed service. And if in the future any bishop be found consecrating a church without relics, let him be deposed as a transgressor of ecclesiastical traditions.

CANON 8

Summary. Jews who are Christians in appearance only shall be excluded from the Church. Their children shall not be baptized nor shall they possess a slave.

Text. Jews who have become Christians in appearance only but secretly keep the Sabbath and observe other Jewish customs, shall not be permitted to receive communion or to attend the prayers or even to enter the church, but let them be openly Hebrews according to their religion. Their children shall not be baptized nor shall they purchase or possess a (Christian) slave. But if any of them is truly and sincerely converted and makes a whole-hearted profession of faith, he is to be received and baptized, and his children likewise.

CANON 9

Summary. Books containing the Iconoclast heresy must be delivered to the episcopal residence in Constantinople.

Text. All writings directed against the venerable images must be delivered up to the episcopal residence in Constantinople, that they may be locked away with other heretical books. If anyone be found concealing such books, if he be a bishop, priest, or deacon, let him be deposed; if a monk or layman, excommunicated.

CANON 10

Summary. No cleric is to leave his diocese and go into another without the knowledge and consent of his bishop and of the bishop of Constantinople.

Text. Since certain members of the clergy, disregarding the canonical ordinances, leave their own diocese and go over into other dioceses, especially into the diocese of this royal city, taking up their abode with princes and holding divine service in their oratories, attention is called to the fact that it is not permitted to receive such persons into any residence or church without the approval of their own bishop and that of the bishop of Constantinople. If anyone does this without such approval and so continues, let him be deposed. With regard to those who have done this with the knowledge of the aforesaid bishops, it is not lawful for them to assume secular responsibilities, since this is forbidden by the canons. If anyone be found holding the office of those who are called *majores* (that is, stewards of the estates of high personages), let him either resign it or be deposed. Let him rather be the instructor of the children and the servants, reading the Sacred Scriptures to them, for to this end was he ordained.

CANON 11

Summary. No episcopal residence and monastery should be without a steward.

Text. Since it is our duty to guard all the holy canons, we ought by all means to observe in its integrity the one which requires each Church to have an *oeconomus,* a steward (Chalcedon, canon 26). If the metropolitan appoints a steward for his Church, he does well; but if he fails or neglects to do this, then the bishop of Constantinople by his own authority shall appoint one. In like manner the metropolitans by their own authority shall make such appointments if the bishops who are subject to them neglect to carry out this canon in regard to their Churches. The same rule is to be observed also in regard to monasteries.

CANON 12

Summary. Any alienation of the property of a diocese by the bishop or of a monastery by the superior is null, and such bishop or superior, if convicted, shall be expelled.

Text. If a bishop or *hegumenos* (abbot) alienate or surrender any part of the farm land belonging to the bishopric or to the monastery into the hands of princes or any other person, his act is invalid according to the canon (Apost. canon 39). Neither is it lawful for him to appropriate any part of it to himself, or to give to his relatives

the things that belong to God. If, however, they are poor, let them be aided by the funds set aside for the poor, but their condition is not to be used as a pretext for despoiling the Church. Nor is property to be surrendered on the plea that it yields no profits; for in that case it is not to be given to secular rulers who are in the neighborhood, but to clerics or husbandmen. But if resort be had to intrigue so that the ruler buys the land from the husbandman or cleric, such transaction is likewise invalid, and the land shall be restored to the bishopric or monastery. The bishop or *hegumenos* acting thus shall be expelled, the former from his bishopric and the latter from his monastery, as those who squander what they did not gather.

Comment. Through the action condemned by the council in this canon the way was frequently opened to ecclesiastical honors and dignities by securing the favor and good will of kings and princes; and bishops and abbots, impelled by ambition, were easily induced to surrender a portion of the Church's property if by doing so they might attain the desired preferment. Recourse was had to intrigue, and various devices were employed to palliate these transfers of Church property to princes and magistrates. The council in the present canon mentions two such schemes and repudiates them.

CANON 13

Summary. Monasteries converted into public houses during the persecution must be restored to their original use.

Text. During the calamity (Iconoclast persecution) that has visited the Churches, some of the venerable houses, for example, episcopal residences and monasteries, have been seized by certain men and converted into public lodging-houses. If those who now hold them are prepared to return them so that they may be restored to their original use, well and good; if not, they shall, if clerics, be deposed, if monks or laymen, excommunicated.

CANON 14

Summary. One not ordained may not read in the ambo during the synaxis. The abbot may ordain a reader if he himself has received the priesthood.

Text. It is well known that certain youths who have received the clerical tonsure but have not yet received any orders from the bishop, read in the ambo during the synaxis, and in doing so violate the canons. We, therefore, absolutely forbid this to be done. This prohibition is to be observed also among the monks. Each *hegumenos* is permitted in his own monastery to ordain a reader, if he himself has been raised to the dignity of *hegumenos* by the laying on of

hands by the bishop and is known to be a priest. Similarly, in accordance with an ancient custom, chorepiscopi may ordain readers with the approval of the bishop.[8]

CANON 15

Summary. In the city of Constantinople no cleric may serve two churches, but in the outskirts, because of the small number of people, this may be permitted.

Text. Henceforth no cleric shall be appointed to serve two churches; each shall attend to that one only to which he was called. To obtain the necessities of life there are various occupations (if the ecclesiastical revenues are insufficient) by means of which, if one so desires, the things needful for the body may be procured, as was also done by St. Paul.[9] This rule applies in the imperial city, but in country places, because of the small number of people, exceptions may be made.

CANON 16

Summary. Clerics shall wear modest and unostentatious clothing and not array themselves in gay and showy apparel embroidered with silk.

Text. All luxury and gaudy apparel are foreign to the sacerdotal state. Hence bishops and clerics who array themselves in gay and showy garments ought to correct themselves; if they fail to amend, they shall be punished. Likewise those who anoint themselves with perfumes. The persecution (Iconoclasm) and all who were defiled by it, not only destroyed the venerable images but also cast aside all decorum, holding in supreme contempt those who lived decently and religiously (ascetically). If, therefore, anyone be found deriding and ridiculing those who are clad in poor but decent clothing, he shall be punished. From early times every cleric wore modest and unostentatious garments, not arraying himself in apparel embroidered with silk and decorated with many colored ornaments; for they had heard that "they that wear soft garments are in the houses of kings."

CANON 17

Summary. No one is permitted to begin the erection of an oratory who has not the means wherewith to complete it.

Text. Since certain monks have left their monasteries because they wished to rule and, unwilling to obey, are undertaking to erect

[8] On the office of reader and its functions, cf. Chalcedon canon 14; on that of the chorepiscopi, *ibid.* canon 2.

[9] Acts 20:34; I Cor. 4:12.

oratories (small monasteries) but have not the means to complete them, it is hereby decreed that whoever shall undertake to do this sort of thing, shall be forbidden by the local bishop. But if he has the means wherewith to complete it, let him carry to completion what he has begun. This rule is to be observed also in regard to clerics and laymen.

CANON 18

Summary. No bishop or *hegumenos* is permitted to have a woman in his service in the episcopal residence or in the monastery. Failure to discharge her shall be followed by deposition.

Text. "Be without offense to those that are without," says the Apostle. Now for women to reside in episcopal residences and in monasteries is ground for offense. Every bishop or *hegumenos,* therefore, who has in his service in the episcopal residence or in the monastery a female slave or freewoman, shall be rebuked; and if he fails to discharge her, let him be deposed. Should it happen that women are employed on suburban estates, and the bishop or *hegumenos* wishes to go there, during his presence no woman shall continue her work, but shall betake herself to some other place until he has departed, so that there be no occasion for complaint.

Comment. The First Council of Nicaea in canon 3 forbade bishops and clerics to have a woman living with them unless she was their mother, sister, or aunt, or some such person on whom suspicion could not fall. The present canon, dealing with the case of bishops, is stricter and expels every woman from the episcopal residence. More than two hundred years earlier, Emperor Justinian (Novella cxxiii, c. 29) enacted: "We allow no bishop to have a woman or to live with one." As bishops are in rank superior to the rest of the clergy, the law was particularly severe with them, because from the nature of the case they were expected to be the leaders and guides of the clergy of inferior rank. In regard to monks and women, Justinian had decreed (Novella cxxxiii, c. 3) that women may not enter a monastery for men, nor may men enter one occupied by women.

CANON 19

Summary. The vows of those presenting themselves for holy orders and for the monastic state, are to be made without the exaction of money.

Text. Avarice has made such inroads among the rulers of Churches that some of them, calling themselves religious men and women, demand money from those who present themselves for the sacerdotal order and the monastic life. If therefore a bishop or *hegu-*

menos or one of the priesthood be found doing this and he does not cease to do so, in accordance with canon 2 of Chalcedon let him be deposed. If the offender be a *hegumena* (abbess), she shall be removed from her monastery and placed in another in a subordinate position. A *hegumenos* who is not a priest is to be dealt with similarly. With regard to what has been given by parents to their children in the monastery as a dowry, or what such persons themselves have contributed from their own means, with a declaration that such gifts are made to God, we have decided that whether such persons continue in the monastery or not, the gifts are to remain with the monastery in accordance with their original declaration; unless there be good ground for complaint against the superior (for a person's departure).[10]

CANON 20

Summary. Henceforth no double monasteries shall be erected. Those now in existence may continue. Monks and nuns shall not dwell together in the same monastery, for thus adultery finds its occasion. Nor shall one have access to the monastery of the other.

Text. We decree that in the future no double monastery shall be erected, because this has become an offense and a scandal to many. In the case of an entire family desiring to leave the world and follow the monastic life, the men shall go into a monastery for men and the women into a monastery for women. The double monasteries that are now in existence may continue according to the Rule of St. Basil, and in accordance with that rule they must be governed. Monks and nuns shall not dwell together in the same monastery, for in such cohabitation adultery finds its occasion. No monk shall have access to a monastery for women, nor shall a nun enter a monastery for men for the purpose of conversing with anyone therein. No monk shall sleep in a monastery for women, nor eat alone with a nun. When food is brought to the nuns by men, the *hegumena* shall be accompanied by one of the aged nuns and receive it outside the gate of the monastery. Should it happen that a monk wishes to see a kinswoman who is in the monastery, let him speak with her in the presence of the *hegumena* in very few words, and then take his departure.

Comment. The double monastery, as distinguished from a monastery for men only and a monastery for women only, was one that served as a

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[10] Compare the first part of this canon with the last part of canon 5 of the present series. In canon 64 of the Fourth Lateran Council, Innocent III, dealing with the same subject in regard to female communities, condemned the person guilty in this matter, whether subject or superioress, without hope of restoration to a monastery of stricter observance. Likewise nuns who had been thus wrongly received were to be removed to other monasteries of the same order.

dwelling for monks and nuns. In the proper sense of the word, it was one in which a community of monks and nuns dwelled together in such a manner or in such proximity that the establishment legally and in point of extent constituted a single unit or monastery. This does not mean that there was a promiscuous mingling of the sexes; far from it. The monastery was double, not mixed. If in the accounts concerning such institutions there is a point specially emphasized, it is that of separation. As a rule each part of the community had its own superior; but the superior of the monks had the general supervision of the entire monastery. The nuns had their own church for their liturgical offices. They had their own refectory and their own private grounds.[11] St. Pachomius in his rule strictly forbade his monks to visit the nuns, except on the occasion of an errand or in case a monk had a relative in the female community, in which case he was governed by certain restrictions. Similar and other restrictions governing separation are contained in the Rule of St. Basil. The monastery and all that belonged to it was in most cases, especially in the East, the common property of the community, monks and nuns.

The birthplace of the double monastery is Egypt, the motherland of Christian monasticism. Its beginnings go back to the beginnings of cenobitism, in the first quarter of the fourth century. The eremitical life with its exalted yet cold and too isolated individualism was in a large measure replaced by the cenobitical or strictly monastic life, where men lived the common life under a common rule and practiced the three evangelical counsels. St. Pachomius, who was the founder of the first cenobium, was the founder also and superior of the first double monastery. The desire to learn and to strive after this new and higher ascetic ideal soon attracted ascetically inclined women to follow the example of the monks. They located themselves in the immediate vicinity of the monasteries, chose the monks' rules for their own monastic life, and subjected themselves to the ascetical guidance of the monks.

This system usually followed in the wake of the monastic ideal. From Egypt it spread throughout the East and West. When and where it was introduced into the West cannot be determined with any degree of certainty. Indications lead us to Gaul. The Synod of Agde (506) in Languedoc, under the presidency of St. Caesarius of Arles, in canon 28 forbade the erection of women's monasteries in the immediate neighborhood of monasteries occupied by men, because of the insidious wiles of the devil and because such proximity is a fruitful source of gossip among the

[11] Father Ryan, S.J., in his learned and fascinating work, *Irish Monasticism. Origins and Development* (Dublin, 1931), p. 141, describes double monasteries thus: "By a double monastery we understand a religious settlement where the houses or cells of both sexes were so close together that all could gather for mass and office in the same church, obey exactly the same rule, and be governed by the same superior."

people.[12] The decision of the synod, we may reasonably surmise, was prompted not by a single instance but rather by a prevailing custom. The theory that in the West the system originated in Ireland and was from there transplanted to the continent by Irish missionary monks is untenable, though there is no doubt that its development in the Frankish kingdom during the seventh century was due greatly to their influence.

Owing to civil and ecclesiastical suppressive legislation inspired by flagrant moral defections, the double monastery as an institution disappeared in the East during the ninth century. During the same period it disappeared also in the West except in Spain. There was a revival of the institution in the West toward the close of the Middle Ages, especially in the Orders of Fonterault (founded 1099), Gilbertines (1146), and Bridgittines (1346). There are no double monasteries in existence in the Western Church today.[13]

CANON 21

Summary. Monks and nuns are not to leave their monasteries and go to others.

Text. A monk or nun is not to leave the monastery to which he or she is attached and go to others. Should this happen, then such a one is to be received as a guest; but it is not proper that he or she be made a member of the monastery without the approval of his or her superior.

CANON 22

Summary. Lay people may eat together, monks and nuns must eat apart. A priest while on a journey may eat in an inn or private house.

Text. To lay people, men and women, it is permitted to eat together, only let them give thanks to the Giver of the food and abstain from all conduct that leads or may lead to moral disorders. If they fail to observe this last provision, let them amend or be punished in accordance with the canons enacted by our predecessors. Those, however, who have resolved before God to carry the solitary yoke and live apart from men (that is, as monks and nuns), shall sit down (to eat) alone and in silence. Moreover, those who have chosen the sacerdotal state, are absolutely forbidden to eat in private with women, unless it be with God-fearing and discreet men and women.

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[12] C.23, C.XVIII, q.2. Hefele-Leclercq, II, 991.

[13] Hilpisch, "Die Doppelklöster. Entstehung u. Organisation," in *Beitr. z. Gesch. d. alten Mönchtums u. d. Benediktinerordens*, Münster, 1928; Berlière, *Les monastères double aux XII*e *et XIII*e *siècles*, Bruxelles, 1923; Butler, *Lausiac History of Palladius*, in *Texts and Studies VI*, Cambridge, 1904; Zeller, "Das Prämonstratenserstift Adelberg, das letzte schwäbische Doppelkloster, 1178 bis 1476," in *Württemberg. Vierteljahrshefte für Landesgeschichte*, n. F., XXV (1916), 106–62.

The same rule is to be observed with regard to relatives. But if it should happen that a monk or priest while on a journey has not with him the necessary food, and because of his pressing need decides to turn aside into a public inn or private house, this he is permitted to do, seeing that need so requires.

THE EIGHTH GENERAL COUNCIL (869–70)

FOURTH COUNCIL OF CONSTANTINOPLE

History. The Eighth General Council was held in 869–70 at Constantinople to put an end to the Photian schism.[1] Owing to the ultimate triumph of that schism, this was the last general council held in the East. Though no doctrinal dispute was involved, many circumstances contributed toward making its convocation a matter of urgency. The preceding decade had witnessed many grave irregularities in the imperial city on the Bosporus. Because he refused holy communion (Epiphany, 857) to the incestuous Caesar (Bardas, the uncle of that youthful debauchee Emperor Michael III), Ignatius patriarch of Constantinople was deposed and exiled (November 23, 857) and the more complaisant Photius, till then a layman and chief Secretary of State, intruded into his place. Photius ran the gamut of ecclesiastical orders from the lectorate to the episcopate in six days. His consecration as patriarch on Christmas Day (857) by Gregory Asbestas, the excommunicated metropolitan of Syracuse in Sicily, involved three distinct offenses: (1) he was ordained to an already occupied see, (2) by an excommunicated bishop, (3) without having observed the interstices. The failure of Photius to obtain recognition from Pope Nicholas I (858–67) provoked him to violent measures against the Church of Rome. These measures culminated (867) in the attempted excommunication of the Pope and his Latins. The assassination of Bardas (866) and of Michael III (867) and the accession of Basil the Macedonian to the imperial throne, completely altered the political and ecclesiastical situation in the East. Basil was as great a rogue as Bardas and Michael were, both of whom he had murdered. And if, by his almost first official act, he deposed Photius and interned him in a monastery, then restored Ignatius to the patriarchal see and resumed friendly relations with Rome, it was not from any love of justice or respect for the papal decree (restoring Ignatius), but because of his general hatred for all of Michael's friends. The Emperor sent a delegation to Pope Adrian II, who succeeded Nicholas, with an account of all that had taken place in the imperial city. After holding a Roman synod (869) which confirmed all that had been

[1] For a complete account of the events leading up to the council, cf. Hergenröther, *Photius, Patriarch v. Constantinopel,* I (Regensburg, 1867), 405–711; II, 1–63. A briefer account will be found in Fortescue, *The Orthodox Eastern Church* (London, 1908), pp. 135–56.

done in the matter by his predecessor, and which renewed an earlier condemnation of Photius, the Pope sent three legates with letters to Constantinople to inform the Emperor of the action of the synod, at the same time requesting him to convoke a general council to examine the whole matter. The legates arrived in September, 869. On the following October 5, the council was opened in the Church of St. Sophia under the presidency of the papal legates. The number of bishops in attendance was always very small; only in the last session were there as many as 102 present, exclusive of three patriarchs. After exhibiting their credentials, the legates presented to the members of the council for their signature the famous formula or confession of faith, drawn up by Pope Hormisdas (514–23) on the occasion of the Acacian Schism.[2] Altogether ten sessions were held. The council condemned the acts of the *conciliabulum* of 861;[3] also the remnants of Iconoclasm that still existed, and the interference of the civil authority in ecclesiastical affairs. Photius was requested to renounce his usurped claim and acknowledge Ignatius as the lawful occupant of the patriarchal see, and was then to be admitted to lay communion. On his refusal to do so, he was again excommunicated and banished to a monastery on the Bosporus. There he remained until Ignatius' death in 877 opened the way for his return to power. The tenth and last session was held February 28, 870, in the presence of the Emperor, his son Constantine, the Bulgarian King Michael, and the ambassadors of Emperor Louis II. The council drew up twenty-seven canons, which deal partly with conditions created by Photius and partly with points of discipline. Two points of doctrinal importance were touched upon. Canon 3 reaffirms the lawfulness of image-veneration, and canon 11 deals with the unity or oneness of the human soul in man. A point of historical interest is canon 21, in which Rome recognizes the longstanding claim of Constantinople to second place in patriarchal rank. The council also issued an encyclical letter to all the faithful, and by letter requested the Pope to confirm its acts.[4]

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[2] Denzinger, *Enchiridion*, no. 171.

[3] For an account of this synod, cf. Hergenröther, I, 419–28; Fortescue, 143 ff.

[4] Mansi, XVI; Hefele-Leclercq, *Hist. des Conciles*, IV, 481–573; Hergenröther, II, 75–132; Fortescue, pp. 156–59. The acts of the council have come down to us in a twofold text, one in the Latin version of Anastasius, librarian of the Roman Church, who was present at the last session as a member of the Frankish embassy, the other in a shorter Greek account. The former gives all the acts *in extenso* and is regarded by scholars as a thoroughly reliable text. To it we owe most of our documentary knowledge of the proceedings of the council. The Greek text is evidently a synopsis or an epitomized presentation of the acts. The greatest divergence in these two texts is found in the canons, of which the Latin text gives twenty-seven, while the Greek contains only fourteen. Thus, the following canons are wanting in the Greek text: 9, 12, 13, 15, 16, 18, 19, 20, 22, 23, 24, 25, 26. The 9th canon of the Greek corresponds to the 10th of the Latin, the 10th to the 11th, the 11th to the 14th, the 12th to the 17th, the 13th to the 21st, and the 14th to the 27th. For a more detailed account of these two texts and also

In the East the ecumenical character of the council was recognized by all who stood in opposition to Photius. Gradually, however, as this opposition waned under the force of subsequent circumstances, the recognition was discarded also and the council was looked upon merely as a local gathering or synod. Ten years later (879) Photius summoned a synod at Constantinople in which he nullified the acts of the council of 869. This is the *Pseudosynodus Photiana*, which the Orthodox Eastern Church counts as the Eighth General Council.[5] In the West there never was any question as to its ecumenical character, except in the case of a few individuals. These exceptions were particularly pronounced in France. But, as the French, or rather certain of their theologians, had not yet recognized the ecumenicity of the Seventh General Council, it was but natural that they should have been slow to extend such recognition to the eighth, since this especially in canon 3 reaffirmed the lawfulness of venerating sacred images.

Since some of the canons of this council are noted for their verboseness, a summary of them will suffice.

CANON 1

Summary. This canon is a renewal of earlier decrees.

Text. **The ancient canons of the Apostles and of the general and particular councils, as well as those of the fathers and doctors of the Church, must be firmly maintained.**[6]

CANON 2

Summary. All the synodal decrees of Popes Nicholas and Adrian dealing with Ignatius and Photius must be observed.

Text. **All synodal decrees of Pope Nicholas and Pope Adrian dealing with Ignatius and Photius must be scrupulously observed. If, after this declaration, anyone be found disregarding them, if he be a priest or cleric, let him be deposed; if monk or layman of whatsoever dignity, let him be excommunicated.**

Comment. The decrees here referred to are those enacted by the two popes in various Roman synods, upholding the rights of Ignatius and condemning the claims of Photius. By insisting upon the observance of these decrees, with the penalty of deposition or excommunication in cases of

for the probable reasons for the omission of these canons from the Greek, the reader is referred to Hergenröther, *op. cit.*, II, 63–75.

[5] The acts of this synod are given by Hergenröther, II, 449–528; Hefele-Leclercq, IV, 585–606.

[6] Cf. canon 1 of the preceding council. Denzinger, no. 336.

violation, the fathers of the council hoped to reduce to a minimum the power and influence of the Photian faction. The usurper had many supporters among the Oriental bishops, some of whom had indeed made their submission to Ignatius in the earlier sessions of the council. Photius never despaired of his cause. During his exile he sought comfort and relief in a vast correspondence, keeping alive the fires of rebellion, the purpose of which was not only to retain and strengthen old friendships, but also to gain new ones for his cause.

CANON 3

Summary. The images of our Lord and of His Blessed Mother and those of the Apostles, prophets, martyrs, and saints shall be duly honored and venerated.

Text. The holy images of our Lord Jesus Christ shall be honored in like manner as the Gospel-book. For, as the words of the Gospel lead us to salvation, so also do the pictures through their colors produce the same effect, and all, learned and unlearned, can derive benefit therefrom. The message that comes to us through the written word, the same is brought home to us through the color of the picture. Since the honor directed toward the picture reverts in intention to the prototype, it follows, in accordance with right reason and ancient tradition, that pictures must be honored in the same manner as the Gospel-book and the picture of the precious cross. If, therefore, anyone does not now honor the picture of Christ, he shall not see His form when He comes to glorify His saints. Likewise do we design pictures and images of His Blessed Mother and of the angels, as also the Sacred Scriptures picture them for us in words; also of the Apostles, prophets, martyrs, and all the saints.[7]

Comment. There was a mild recrudescence of Iconoclasm in certain localities of the East, especially at Constantinople, at the time of the council. Hence the fathers found it necessary to promulgate a few canons condemning it. The phraseology of these canons in their Latin translation (for instance, the use of the word *adorare*) proved particularly offensive to some Frankish bishops, who on that account were slow to recognize the ecumenical character of the council.

CANON 4

Summary. Photius was never bishop, hence those ordained by him must be deposed.

Text. We declare that Photius never was bishop nor is now and that those ordained or promoted by him may not retain the dignity to which he raised them; furthermore, that those elevated by him

[7] Denzinger, no. 337.

through the solemn rite of benediction to the office of superiors (of monasteries) shall be deposed,[8] and that the churches consecrated and altars erected by him or by bishops ordained by him, must be consecrated and erected anew.

CANON 5

Summary. In all promotions to ecclesiastical orders the interstices must be observed. Anyone raised to any rank in a manner contrary to this ordinance shall be suspended.

Text. In accordance with earlier canons, we decree that no senator and, for that matter, no layman, who has but lately received the tonsure in the hope of being elevated to the episcopal or patriarchal rank and has become a cleric or monk, is permitted to rise to such a dignity unless he has passed through the period of probation required for each order. Because the desire for the tonsure inspired by such a disposition is prompted not by religion, the love of God, or the hope of leading a virtuous life, but solely by the love of glory and power. Especially do we forbid such promotions when they are instigated by imperial request or coercion. Anyone who without any desire for a high dignity, but in a spirit of humility renounces the world, becomes cleric or monk, and passes through the required probationary period for each order, that is, acts for one year as lector, two as subdeacon, three as deacon, and four as priest, such a one may be elected bishop. In regard to those who for a long time have been clerics in minor orders or monks, have religiously observed the laws of the Church, and are worthy of the episcopal dignity, the aforesaid period of probation may be abbreviated by the bishops. Anyone who has been raised to the aforesaid rank in a manner contrary to this ordinance, shall be suspended from all sacerdotal functions, as one having been promoted in violation of the canons.

Comment. This canon deals with the observance of the interstices, particularly in cases where the candidate is raised from the rank of a laic to that of a bishop or patriarch. The earlier canons referred to (First Nicaea, canon 2; Sardica, canon 10; and Apost. canon 80) had been more or less disregarded, with the result that the episcopal office was open to such unworthy candidates as possessed sufficient influence with the imperial court to attain it. The canon was, of course, occasioned by the case of Photius, who in the brief period of six days was hurried through all orders from the lectorate to the episcopate. But there had been numerous other violations. Notable was the case of Tarasius (784–806) who, from the office of imperial secretary and a layman, had suddenly become patriarch of Con-

[8] The Greek text only is clear on this portion of the canon.

stantinople.[9] Pope Adrian I disapproved his elevation directly from the lay state to the dignity of a bishop as contrary to the canons, but because of his orthodoxy, humility, and religious zeal, accepted his incumbency. A more remote and most scandalous instance was that of the adventurer and Cynic philosopher Maximus, who in a single night was rushed through all the orders to replace Gregory of Nazianzus as bishop of Constantinople.[10]

The council lays down the rule that no layman is permitted to be elevated to episcopal rank, unless in the reception of the various orders he has observed the period of probation required by each. It specifies a period of one year in the lectorate, two years in the subdiaconate, three in the diaconate, and four in the priesthood. This determination of the interstices by the council was apparently its own independent action and not merely a renewal of an earlier law. What the earlier practice was is not clear. It differed in different periods and in different localities. The Synod of Sardica (344) in canon 10 does not specify the length of the interstices, but simply states that the candidate is to remain in each order for no brief time so that his faith, character, and deportment may be known, and if found worthy, he may be raised to the sacerdotal, that is, episcopal dignity.[11]

CANON 6

Summary. Photius is condemned for his diabolical and fraudulent actions in the synod of 867.

Text. Since Photius, after he had been condemned by Pope Nicholas for his usurpation of the Constantinopolitan see, appears to have picked up from the streets some worthless men and to have appointed them vicars of the three Oriental patriarchal sees, using them in his fraudulent council, in which he charged the Pope with numerous crimes and excommunicated him and all who are in communion with him, the acts of which we have seen and which have been synodically consigned to the flames, we condemn him, therefore, also on that account; likewise all the accomplices in that fraud, the false vicars and the authors of the defamatory writings (against the Pope), in accordance with the canon of Martin I.

Comment. Photius' hatred toward the Pope and his Latins reached its climax when the Latin missioners in Bulgaria, which in 866 became part

[9] *Vita Tarasii*, ed. Heikel, Helsingfors, 1891.
[10] Cf. I Constantinople, canon 4.
[11] C. 10, D.LXI. Thomassin, *Vetus et nova ecclesiae disciplina*, I, lib. II, cap. 36.

of the Western patriarchate, refused to accept the Byzantine chrism.[12] To him the Pope and his Latins were liars, forerunners of apostasy and agents of Antichrist, deserving a thousand deaths. To put an end once and for all to their perversive activities, he determined to carry the war into their own camp. In 867 he addressed an encyclical letter to the three Eastern patriarchs, in which he details his charges against the Pope and the Latins and invites them to attend a general council to be held at Constantinople.[13] It is extremely doubtful whether this letter was ever really sent to them. At any rate, in the second half of 867 Photius assembled his council and, to give it an aspect of greatness and importance, left nothing undone that fraud and unscrupulous swindle could suggest. To vest it with the character of an ecumenical council, he picked up certain monks who happened to be in the city and appointed them vicars of the three Oriental patriarchal sees, he himself furnishing their credentials and other necessary documents. The assembly, which was but a tool in the hands of Photius, was presided over by Emperor Michael. Malcontents and hired accusers were admitted, who charged Pope Nicholas with various misdemeanors and appealed to the council for justice. Their charges were supported and corroborated by false witnesses who had previously been well schooled for the part they were to play in the farce staged by the Luther of the Orthodox Church, just as they had been for the *conciliabulum* of 861. The proceedings ended with the deposition of the Pope and the excommunication of all who should hold communion

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[12] The Bulgars accepted Christianity from Byzantine missioners in the year 864 or 865, when their prince, Bogoris, was baptized with many of his people. Bogoris, however, for various reasons soon tired of the Byzantines. In 866, to free himself from their authority, he sent an embassy to Pope Nicholas requesting him to create a Bulgarian hierarchy. But this did not last long either, for, when the schism of Photius became an established fact, the Bulgars again went over to the Eastern patriarchate.

[13] He raked up the following five charges against the Latins: (1) they fast on Saturdays (it is true they did, for that was then the universal custom in the Western patriarchate); (2) they eat butter, milk, and cheese during the first week of Lent (the Latins did not begin Lent till Ash Wednesday, while the Byzantines began it on Quinquagesima Monday); (3) they despise married priests and thus prove themselves guilty of the Manichaean error; (4) they do not acknowledge the sacrament of confirmation conferred by a priest (this is false. In missionary countries where there are no bishops, the pope gives authority to certain priests to administer that sacrament. Moreover, the Latins recognize the confirmation conferred by the Orthodox Church as valid. The reason why the Latin bishops rejected the chrism of Photius, was because the right of sending the consecrated chrism was long regarded as a sign of jurisdiction in Eastern Churches, just as much as that of ordaining bishops); (5) they have changed and corrupted the Constantinopolitan Creed by inserting the *Filioque* (we reply: in the original Creed of Constantinople there was no mention of the *Filioque*, because that Creed was directed against the so-called Pneumatomachian or Macedonian error, against which it sufficed to declare the procession of the Holy Ghost from the Father). Fortescue, 152 f.

with him. The execution of this sentence against the Pope, Photius sought to impose upon the Western Emperor, Louis II.

The acts of this pseudo-synod were grossly falsified by Photius with a view to give it the appearance of an ecumenical council and thus impart the greatest possible authority to its decisions against the Pope. As a matter of fact, such a council as these acts represented was never held. We have it on good authority that no more than twenty-one bishops signed the acts; yet the acts, as they came from the hands of the falsifier, bore the signatures of over one thousand persons, hundreds of whom had not only not attended the council but had been wholly unaware of its convocation. Because of the extremely scurrilous nature of their contents, the acts were consigned to the flames by the Eighth General Council.

The canon of Martin I referred to, is canon 20 of the Lateran Synod held in 649 under Pope Martin I. This canon declares that anyone making use of false documents, false vicars, false witnesses, and the like, and not repenting, is forever condemned (*in saecula saeculorum condemnatus sit*).[14]

CANON 7

Summary. Those anathematized are forbidden to paint images in the churches or to give instructions of any kind anywhere.

Text. Those who have been anathematized by this holy and ecumenical council are not permitted to paint holy images in the churches or to give instructions anywhere, no matter whether these be of a divine or purely secular nature. Anyone employing such persons in violation of this ordinance, if he be a cleric, shall be in danger of being deposed from his rank; if a layman, he shall be deprived of holy communion.

Comment. Images are frequently used in churches in order that the illiterate may read on the walls what they are unable to read in books. Pictures, then, are a means of instruction. As the partisans of Photius had been forbidden to impart instructions of any kind, their condemnation naturally disqualified them for painting pictures in buildings consecrated to the service of God.

CANON 8

Summary. Patriarchs of Constantinople are forbidden to demand for their security from their clergy a written declaration of adherence.

Text. Since it has come to our knowledge that not only heretics and wicked persons when they possess themselves of the throne of

[14] Denzinger, no. 274. For a more complete account of this fraudulent Photian synod, cf. Hergenröther, I, 639–55; Hefele-Leclercq, IV, 442–49.

the Church of Constantinople, but also orthodox and legitimate patriarchs demand for the security of their position from their clergy (including the bishops subject to their jurisdiction) a written declaration of adherence, this holy and ecumenical council forbids that this be done in the future, with the single exception of documents in which according to a prescribed form and ancient custom the bishops at their consecration make profession of their orthodoxy. Anyone who shall dare violate this ordinance, or attempt to do so, or consent to such an attempt, shall be deprived of his dignity.

Comment. Moral corruption reached its height in the imperial court of the Eastern Empire during the reign of Michael III. When Theodora retired from public affairs in 856, her brother Bardas became regent with the title of Caesar, because her son Michael was still very young. Michael, surnamed the Drunkard by his fellow Emperors, was one of the most vicious rulers that sat on the throne of Constantinople. Bardas, who had put away his lawful wife and lived in open incest with his daughter-in-law Eudokia, was no better. With such creatures at the head of the government, which was always looking for an opportunity to interfere in ecclesiastical affairs and always ready to give ear to ecclesiastical trouble-makers, of whom there were many in the Eastern Church in those days, or for that matter at all times till the completion of the schism, no occupant of the patriarchal see felt secure in his position; hence there arose the practice of enlisting the support of friends among the clergy. Occasion for the present canon was of course given by Photius who, though a creature of the Emperor, demanded from his bishops a written declaration of unqualified adherence to his cause to justify his claims against the opposition of the Pope and Ignatius. The practice was common not only among the unlawful occupants of the see but, as the canon indicates, was resorted to also by orthodox and lawful patriarchs. Indeed Ignatius, too, had such written assurances of support, but these had come to him unsought, whereas Photius in most cases obtained his by means of threats and extortion.

CANON 9

Summary. All contracts made by Photius between himself and his adherents before his intrusion into the Constantinopolitan see are null and void.

Text. **Since Photius long before his intrusion into the Constantinopolitan see bound his adherents to himself by written documents or contracts, in order to learn from them a new wisdom, which is folly in the sight of God, we declare all such contracts null and void. Anyone found acting in contravention of this decision, if a cleric, let him be deposed; if a layman, excommunicated.**

Comment. Photius was one of the most remarkable men of the Middle Ages. Had he not immortalized himself as the originator of the most disastrous schism in Church history, there is no doubt but that he would always be ranked as the greatest man in the Byzantine Church, and would perhaps have been the last of the Greek fathers. He was a finished scholar in every department of contemporary knowledge, a sort of universal genius, theologian, philosopher, historian, philologist, lawyer, mathematician, natural scientist, orator, and poet.[15] His success as teacher was undisputed, his impression and influence on his pupils, astounding and lasting. During his academic career Photius recruited his future army, and in it are to be found the real impulses of that whole-hearted enthusiasm and love which so many of his talented pupils accorded him and which he later utilized for his own evil purposes. The friendships then formed were sealed by contracts. He demanded and obtained from his pupils and friends a written pledge of adherence to his teachings and of obedience to his will. *Jurare in verba magistri* was a fundamental rule of his school. It is these contracts that the council condemns and declares null and void.

CANON 10

Summary. No one is to leave without approval the jurisdiction of his own patriarch, even though the latter be guilty of a grave crime.

***Text.* No layman, monk, or cleric shall, previous to an examination and conciliar decision, leave the jurisdiction of his own patriarch, though he may pretend to know that the latter is guilty of a grave crime; nor shall he omit his name in the liturgy. The same rule is to be observed also by bishops and priests toward their patriarch. Whoever is found to act contrary to this decision of the holy council, shall, if a bishop or cleric, be suspended; if a monk or layman, excommunicated.**

Comment. This canon was directed against those who had cut themselves off from the jurisdiction of the lawful patriarch, Ignatius, and had gone over to that of Photius; and against all who were disposed to do so. To enlist them in his cause, the intruder had recourse to every conceivable device to turn bishops, priests, and laymen against the lawful occupant.

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[15] The extant works of Photius have been edited by Migne, PG, CI–CIV. Hergenröther has published a collection of addenda: *Monumenta graeca ad Photium ejusque historiam pertinentia*, Regensburg, 1869. The most important work of Photius is his *Myriobiblion*, which is an incomplete list of books that he had read. It gives descriptions of their contents, often long quotations and critical notes about their authors. It is noted particularly for the fact that it contains a number of Greek classics which otherwise would have been lost.

CANON 11

Summary. The Old and New Testaments teach that man has but one rational and intellectual soul.

Text. **While the Old and New Testaments teach that man has one rational and intellectual soul, and this is the teaching also of all the fathers and doctors of the Church, some persons, nevertheless, blasphemously maintain that he has two souls. This holy and general council, therefore, anathematizes the authors and adherents of that false teaching. Anyone presuming to act contrary to the decision of this great council, shall be anathematized and cut off from the faith and society of Christians.**[16]

Comment. This canon was occasioned by Photius and those of his adherents who predicated of man a psychic dualism. While there can scarcely be any doubt that in this case Photius was the author or originator of that doctrine, it may be safely stated that he never taught it or urged its acceptance on anyone from conviction. When his friend, the philosopher Constantine, reproached him with holding and teaching such a pernicious doctrine, he replied that his action in this respect was inspired simply and solely by a desire to see what his rival Ignatius, who was less skilled in philosophical argument, would do when confronted by a heresy based and defended on strictly philosophical grounds. There is, moreover, no trace of that doctrine in any of his writings. In his arguments against the Manichaeans and in his second book against the Paulicians, where he had occasion to develop or give expression to such heretical views, we look in vain for them; on the contrary, he asserts there the orthodox doctrine: The same God who created the human body created also the soul. In another place he states explicitly that man is composed of a body and a soul (ζῶον ἐκ ψυχῆς καὶ σώματος συνεστός). It seems highly probable that his oral teaching on this point, intended by him merely to antagonize his rival, was misunderstood by his over-zealous pupils, who took their master at his word, utilized it to embarrass Ignatius, and thus gave occasion for this canon.[17]

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16 Denzinger, no. 338.

17 Hergenröther, III, 444 ff. This canon formed the subject of no little discussion during the Güntherian controversies. Anton Günther (d. 1863) in his theory of knowledge maintained that man is endowed with a twofold faculty of thought, or what amounts to the same thing, two thinking subjects essentially different, the one a logical function which deals with phenomena, the other ontological which deals with being underlying the phenomena. From this dualism of thought naturally follows a dualism of spirit, the existence in man of a soul distinct from the rational soul. The opponents of this theory appealed to this canon, but with little success, for the Güntherian theologians retorted that the council in this canon simply wished to teach that there is in man only one rational soul and not two, without excluding the existence of another, inferior soul. The

CANON 12

Summary. Those raised to the episcopal dignity by secular power or intrigues, shall be deposed.

Text. **As the Apostolic canon (31) and other synodal decrees, so do we also ordain that whoever has been raised to the episcopal dignity through the intrigues or power of secular princes, shall be deposed.**[18]

Comment. This canon was also directed primarily against Photius, who after the deposition of Ignatius was raised to the episcopal see of Constantinople chiefly through the power and intrigues of Bardas.

CANON 13

Summary. For the higher ecclesiastical dignities, clerics attached to the cathedral of Constantinople shall be chosen, and not strangers or outsiders.

Text. **We decree that for the higher ecclesiastical dignities, clerics attached to the cathedral of Constantinople, who have spent some time in clerical orders and are known to be of good character and deserving of preferment, shall be chosen, and not strangers or outsiders (that is, laymen, such as Photius and others). Moreover, those who hold the office of steward in the houses of princes or on rural estates, shall not be appointed on the clerical staff of the cathedral.**

Comment. The council in this canon aimed to restore in the Constantinopolitan Church the ancient discipline that dignities are to be conferred on those only who are worthy of them, and to prevent the recurrence of a situation such as it was then dealing with. Hereafter the candidates for the higher ecclesiastical offices, especially for that of patriarch, must be chosen from the clergy attached to the cathedral and not from the ranks of outsiders, much less from the ranks of those who are not clerics at all, as had happened in the case of Photius and others. For in the promotion of one of the latter classes, there lurks not only the danger that the Church will be dishonored, but it means also the denial of honor to those who by their long and faithful service in the Church are entitled to it. Those who act as administrators in the household affairs of princes or of their rural estates, may not be appointed members of the clerical body attached to the cathedral. The reason is that such clerics, being in high favor with the

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erroneous teachings of Günther and his school were condemned by Pius IX, "Breve *Eximiam tuam* ad Card. de Geissel, archiep. Colonien.," 15 Junii, 1857, and "Epist. *Dolore haud mediocri* ad episc. Wratislavien. (Breslau)," 30 Apr., 1860. Cf. Denzinger, nos. 1655–58.

[18] Denzinger, no. 339.

princes, may through their influence secure such an appointment with the sole view of attaining higher dignities.

CANON 14

Summary. Bishops should be duly honored by the secular princes.

Text. Those who have by divine grace been raised to the episcopal dignity, shall be duly honored by the secular princes. Under no circumstances shall they go a great distance from their Churches to meet these gentlemen, or on meeting them dismount from their horses and greet them by bending the knee. Rather should bishops have the courage to reprove such persons when necessary and correct them. Any bishop who after this decision thus dishonors his dignity, shall be suspended from office for one year, and the prince who despises or belittles the episcopal dignity, shall be deprived of holy communion.

CANON 15

Summary. No bishop may sell sacred vessels or other valuables except in the case specified by the canons. Nor may he dispose of ecclesiastical lands. All such transactions are null.

Text. No bishop is permitted to sell the sacred vessels or other valuables belonging to his Church except in the case specified by the ancient canons, namely, when it is necessary for the redemption of captives. Neither is it permitted to dispose of under a perpetual lease or to sell ecclesiastical lands or other properties. Everyone having authority over ecclesiastical properties is expected to improve and enlarge these according to the needs of the Church; his own property, on the other hand, he may dispose of in the manner and to whomsoever he wishes. Whoever acts contrary to this decision shall be deposed, and the contracts, whether oral or written, covering the sale or lease of such properties, of sacred vessels, or other valuables, shall be null and void. He, however, who has bought or holds under lease ecclesiastical possessions as aforesaid and does not return them to the Church to which they belong, shall be anathematized till he has made restitution.

CANON 16

Summary. Those who under Emperor Michael ridiculed everything sacred and placed religion on a level with buffoonery, and have not yet confessed their crime and atoned for it, are excommunicated.

Text. Those who under the régime of Emperor Michael ridiculed the sacred liturgy, impersonated bishops and otherwise parodied

our holy religion, and have not yet confessed their crime and by penance atoned for it, are excommunicated for a period of three years. During the first year they shall take their place with the *flentes*, during the second with the catechumens; and the third year shall be spent in the class of the *consistentes*. If in the future any emperor or other high official shall stage such buffoonery, it is the duty of the patriarch and of the bishops who are with him to reprove and exclude him from the sacred mysteries; a severe penance shall be imposed on him, and if he does not speedily undertake the performance of it, he shall be anathematized. If the patriarch and bishops fail to manifest the necessary zeal in this respect, let them be deposed.

Comment. Emperor Michael discovered a unique way of enjoying himself by ridiculing his religion. He hired a clown and appointed him his patriarch. This man, dressed up in a caricature of bishop's vestments, was accustomed to hold mock religious services, mimicking Ignatius, and doing other such things for the entertainment and amusement of Michael, his mistresses, and his friends.[19]

CANON 17

Summary. Patriarchs have the right to summon all their metropolitans to the patriarchal synod and to punish them if they are guilty of a misdemeanor. Those who without good reason fail to heed the summons, shall be punished.

Text. The council declares that the patriarchs have the right to summon to the patriarchal synod and to punish if convicted of a misdemeanor, all metropolitans who have been elevated by them either through ordination or through the bestowal of the pallium; and the metropolitans are no longer to excuse their absence from the patriarchal synod on the plea that they themselves held metropolitan synods. Even though the general council does not forbid the latter, the patriarchal synods are, nevertheless, far more important. Nor is it true that a synod may not be held without the presence of the secular ruler. The canons do not say that secular rulers, but that the bishops shall assemble in a synod. In ancient times a lay person was never present at a local synod, but only at a general council. Moreover, it is not proper that secular princes be spectators of what takes place in regard to the clergy. The metropolitan who in the future without a very good reason fails to obey the summons of his patriarch, shall, if he delays two months, be suspended; if a whole year, deposed. He who fails to comply with this decision, shall be anathematized.[20]

19 On the different penitential stations, see I Nicaea, canon 11.
20 Denzinger, no. 340.

Comment. The council ruled that patriarchs have the authority to summon metropolitans to the patriarchal synods and threatened with severe punishment those who without good reason disobey such summons. The opinion of those who would permit secular princes to attend provincial synods it characterized *tanquam perosum quiddam.* By affirming the distinction between the ecclesiastical and civil powers, it proclaimed the Church's independence of the state. The presence of secular princes at such synods was advocated chiefly by the princes themselves, who were never so happy as when they had an opportunity to interfere in ecclesiastical affairs. In a letter to Michael III, Pope Nicholas I stated the reason for their admission to general councils: *Ubinam legistis imperatores antecessores vestros in synodalibus conventibus interfuisse, nisi forsitan in quibus de fide tractatum est, quae universalis est, quae omnium communis est, quae non solum ad clericos verum etiam ad laicos, et ad omnes omnino pertinet christianos?* [21] In equally explicit terms our council gave the reason for their exclusion from provincial synods: *Neque enim fas est, saeculares principes spectatores fieri rerum quae sacerdotibus Dei nonnumquam eveniunt.* One of the chief purposes of the provincial synods was to correct provincial abuses. This is indicated also by our canon when it states that in patriarchal synods the patriarch has the right to punish any metropolitan belonging to his jurisdiction. Respect for the priesthood dictated a policy of exclusion, for it was unbecoming that seculars should be spectators of the admonitions and punishments that fell to the lot of delinquent clerics.

CANON 18

Summary. Property and privileges granted to a Church and possessed by that Church for thirty years, may not be taken away by seculars.

Text. The property and privileges which have been granted, whether in writing or not, by emperors or by other persons to a Church, and which that Church has possessed for a period of thirty years, may not be taken away by a secular person either by force or other means. Any such persons acting contrary to this ordinance, shall be anathematized.

CANON 19

Summary. Metropolitans shall not go to the Churches of their suffragans and impose burdens on them, squandering the money intended for the poor and other purposes.

Text. No archbishop or metropolitan shall leave his own Church and, under pretext of visitation, but really impelled by avarice, be-

[21] PL, CXIX, 943.

take himself to the Churches of his suffragans to abuse his power by imposing heavy burdens on their subjects and squandering the money that was intended for the poor and other ecclesiastical purposes. Let hospitality and other things necessary for the journey be accepted with reverence and the fear of God, but no demand should be made that would prove a burden to those Churches or their bishops.

CANON 20

Summary. A bishop who without due notice expels for failure to pay rent one who possesses Church property as emphyteusis, shall be deposed.

Text. No bishop shall by his own authority forcibly expel, for failure to pay rent, one who possesses Church property as emphyteusis (a perpetual lease of lands and tenements in consideration of annual rent and improvements thereon); but he must notify such a one that he will lose the possession if he fails to pay rent for a period of three years. If he delays for that length of time, then the bishop shall take the matter to court and demand the return of the Church property. If any bishop acts contrary to this decision and continues in his disobedience, let him be deposed.

CANON 21

Summary. Secular authority shall not treat disrespectfully or seek to depose any patriarch; nor shall anyone direct against the pope of Rome any libelous and defamatory writing. Any secular power attempting to expel any patriarch, shall be anathematized.

Text. No secular authority shall treat disrespectfully or seek to depose any of the five patriarchs; rather are they to be highly honored, especially the pope of Old Rome, then the patriarchs of Constantinople, Alexandria, Antioch, and Jerusalem. Nor shall anyone direct against the pope of Old Rome any libelous and defamatory writings, as was done recently by Photius and earlier by Dioscurus. If a secular authority shall attempt to expel the pope or any of the other patriarchs, let him be anathema. And if an ambiguity or controversy concerning the Holy Church of the Romans be brought before a general council, the question should be examined and disposed of with becoming respect and reverence, and no sentence should be boldly pronounced against the supreme pontiff of the elder Rome.[22]

Comment. This is one of the most important canons of this council. It threatens with anathema any secular ruler who shall dishonor or seek to remove from their sees any one of those who occupy the patriarchal

[22] Denzinger, no. 341.

thrones, especially the pope of Rome. It was occasioned, of course, by the action of Emperor Michael and the Caesar Bardas, who had deposed Ignatius and set Photius in his place. Moreover, Michael presided over that infamous pseudo-synod of 867 which pretended to excommunicate and depose Pope Nicholas and sought to entrust the execution of this sentence to Emperor Louis II. In concluding the canon, the council lays down the important rule that if at any time in the future a general council be assembled and any complaint or controversy arise regarding the Church of Rome, the matter should be examined and disposed of with proper respect and reverence for the dignity of the bishop of Rome, and no sentence should be audaciously pronounced against him.

From an historical point of view, it is important to note in the papal approval of this canon the changed attitude of Rome toward the long-standing claim of Constantinople to second place in patriarchal rank. Rome had persistently refused to endorse the rearrangement of the ancient patriarchates of the East, and up to this time canon 3 of the First Council of Constantinople and canon 28 of Chalcedon had been dead letters so far as she was concerned. But circumstances had greatly changed since the days of Nectarius and Anatolius. Since the Moslem conquest, the other three Oriental patriarchates had become mere shadows of their former greatness and their occupants were content to live at Constantinople as an ornament of that patriarch's court. There was now no one in the East to dispute the ambition of Constantinople, whose patriarch, by force of circumstances, had become, after Rome, the highest ecclesiastical authority in the Orient. The Orientals, moreover, recognized the primacy of Rome; hence it would have been unwise for the pope to continue the protests and reject this canon and thus invite an intensification of Greek anger toward the Latins and possibly a complete break between the East and the West. It was then in the interests of peace and union that Adrian II granted implicitly what Leo I had denied explicitly to Anatolius. We say implicitly, because the canon does not officially define the priority of Constantinople, but in enumerating the patriarchates merely follows the Oriental custom of giving it second place. This prerogative was explicitly recognized in the Fourth Lateran Council by Innocent III and in the Council of Florence by Eugene IV.

CANON 22

Summary. All promotions and consecrations of bishops must be made by the election and decision of the college of bishops, and no secular power shall intrude itself.

Text. In accordance with earlier councils this holy and general assembly decrees that all promotions and consecrations of bishops

shall be made by the election and decision of the college of bishops, and no secular ruler or other lay person possessing influence shall under penalty of anathema mix himself into the election or promotion of a patriarch, metropolitan, or any bishop, unless he be invited by the Church herself.

Comment. The council devoted two canons to the subject here under consideration. In canon 12 it punishes with deposition all bishops who seek or consent to the intervention of secular princes in favor of their promotion and consecration, while in the present one it anathematizes the princes who interfere in episcopal elections. The rule that a bishop is to be elected by all the bishops of the province was laid down by the First Council of Nicaea in canon 4. Synodal prohibitions against secular interference in such elections appeared about the same time and have been often renewed. Most of the troubles that afflicted the Eastern Church were caused by the continued meddling of secular authorities in matters ecclesiastical, especially in episcopal elections; and it is no tampering with truth to say that but for the employment of the Church by the emperors and their satellites as a means of attaining their political ambitions, there would never have been a break between the East and the West. This canon was frequently appealed to in the investiture conflict of the eleventh century.

CANON 23

Summary. Bishops are forbidden to dispose of properties belonging to other Churches. No priest or deacon shall pass without approval from his own Church to another.

Text. **It has come to our knowledge that some bishops dispose of possessions belonging to other Churches, and thus usurp an authority that belongs to other bishops. This great and general council has decreed therefore, that no bishop or chorepiscopus shall perform or take part in such an iniquitous transaction; nor shall he appoint priests or any other clerics to churches that are not under his jurisdiction. Furthermore, no priest or deacon shall of his own accord pass to a Church for which he was not originally ordained, for this is illicit and contrary to the canons. Whoever acts contrary to these provisions, shall be duly punished and if he does not amend, let him be deposed.**

CANON 24

Summary. Metropolitans who are so absorbed in secular pursuits that they compel their suffragans to do their work, shall be punished.

Text. **Some metropolitans are, contrary to ecclesiastical law, so absorbed in secular pursuits and so utterly negligent and careless in**

their spiritual duties that they have all the divine service in their own churches conducted by one of their suffragan bishops, who are said to be commanded to perform those services in their turn and at their own expense, thus forcibly employing those who are vested with episcopal dignity as clerics subject to them, a proceeding that absolutely lacks all Apostolic sanction. Any metropolitan, therefore, who in the future shall employ his suffragans to perform the aforesaid services, shall be punished by his patriarch and, if he does not amend, let him be deposed.

CANON 25

Summary. All clerics ordained by Ignatius and Methodius but who even now are adherents of Photius and refuse to submit, are deposed and deprived of all sacerdotal functions.

Text. The bishops, priests, deacons, and subdeacons of the Church of Constantinople who have been ordained by the Patriarchs Ignatius and Methodius, but who even now are adherents of Photius and refuse to submit to this holy and ecumenial council, are deposed and deprived of all sacerdotal functions, as Pope Nicholas had already decreed, and under no circumstances are they to be listed again in the register of the clergy, even if they repent. Moved by compassion, we permit them in that case to receive holy communion as laymen.

CANON 26

Summary. A priest or deacon deposed by his bishop and dissatisfied with the judgment rendered, may appeal to the metropolitan. In like manner may a bishop appeal to the patriarch against a metropolitan.

Text. If a priest or deacon has been deposed by his bishop on account of some crime, and if he maintains that he has suffered an injustice and is dissatisfied with the judgment of his bishop, feeling that he in his decision was influenced by ill-feeling toward him or by favor toward others, he may appeal to the metropolitan of the province, who shall then with the bishops examine the matter in a provincial synod and pronounce judgment in accordance with the results of their investigation. In like manner may a bishop appeal to the patriarch against the decision of his metropolitan, who shall then with the other metropolitans subject to him, decide the matter. No metropolitan or bishop may be judged by the neighboring metropolitans of his province; this must be done by the patriarch. Anyone who does not submit to this decision, let him be excommunicated.

Comment. The right of appeal is founded on the natural law. The earliest conciliar legislation on the subject is canon 5 of the First General

Council, which permits clerics who believe themselves to have suffered injustice at the hands of their bishops to have recourse to higher authorities. In the same century and in the following centuries this is emphasized by general and by provincial councils. In the East we find it mentioned in canons 6 and 12 of the Synod of Antioch (341) and in canon 9 of the Council of Chalcedon. In the West it was considered by the synods of Carthage (397), canon 10 and (398), canon 66; Vannes (465), canon 9; Orleans (538), canon 20, and others.[23]

CANON 27

Summary. The customary liturgical vestments are to be retained in each province. Bishops are not to wear the pallium to satisfy a spirit of self-love. Monks raised to the episcopal dignity must retain the monastic habit.

Text. **We decree that the customary signs or marks (liturgical vestments) that characterize the various ecclesiastical orders be retained in each province and locality. Bishops to whom the pallium has been granted shall wear it only at certain times and places and not indiscriminately to satisfy a spirit of self-love and a desire for vain glory. Monks who have been raised to the episcopal dignity must retain the monastic habit, and no one is permitted to lay it aside without becoming a violator of his own agreements. Every bishop, therefore, who wears the pallium outside the times prescribed, or lays aside the monastic habit, if he does not submit to correction, let him be deposed.**

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[23] Leclercq, "Notes pour l'histoire du droit d'appel," in Hefele-Leclercq, *op. cit.*, II, 1238–59.

THE NINTH GENERAL COUNCIL (1123)

FIRST LATERAN COUNCIL

History. The chief historical significance of the reign of Pope Callistus II (1119–24) is his settlement of that long and bitter investiture quarrel. The settlement, though not entirely satisfactory, was at least sufficient to give assurance of a long-desired and much needed peace. The agreement between the Pope and Henry V of Germany was concluded at Worms, September 23, 1122, and is known in history as the *Pactum Callixtinum*, or more commonly as the Concordat of Worms. It was the first concordat, that is, the first agreement of its kind made between the papacy and a civil power. It provided for the Emperor's renunciation of the right of spiritual investiture with ring and crosier, and his receiving instead the right of lay investiture with the scepter, a symbol of temporal authority. It abolished the arbitrary bestowal of ecclesiastical offices and benefices by laymen; provided for the freedom of episcopal and abbatial elections and consecrations; drew a sharp line between spiritualities and temporalities; secured recognition of the principle that ecclesiastical jurisdiction can come from the Church only, and tacitly abolished the unwarranted claim of the Emperor to interfere in papal elections. Moreover, the Emperor promised to protect the Roman Church and to restore to the Holy See whatever possessions had found their way into his hands. On his part the Pope granted the Emperor the right of presence at elections of bishops and abbots when the vacancy occurred within the limits of the Kingdom of Germany, with the exclusion, however, of simony and constraint. In contested elections the Emperor, after hearing the advice and verdict of the provincial bishops, was to give his support and approval to the better side. In Germany the elected candidate was to receive investiture with the scepter before consecration, in Italy and Burgundy after consecration. Finally, the Pope agreed not to molest those who during the controversy had sided with the Emperor. It was a compromise solution of a vexed problem, and although the Pope made some important concessions, he remained master of the field.

So great was the satisfaction created by this agreement that the year 1122 was hailed in many contemporary documents as the beginning of a new era. For its more solemn ratification and in deference to the wish of the Archbishop of Mainz, the Pope convened (March, 1123) in Rome the First Lateran Council, the first general council to be held in the West.

Owing to the absence of the official acts, it is impossible to state with any degree of definiteness what was the procedure of the council or even what was the number of sessions held. It was opened most probably on March 18, 1123, the third Sunday of Lent; the canons were drawn up on March 27, and the concluding session was held on April 6. The council was attended by over three hundred bishops and many abbots from all parts of Europe and was presided over by Callistus in person. It solemnly approved and confirmed the agreement that had been arrived at with Henry V, and then gave consideration to some other matters of importance. The exact number of disciplinary canons issued by the council is a matter of uncertainty. So far as we know, no complete list of them has come down to us. What lists we have are not only incomplete but they also differ in the arrangement of the canons. The order here followed is that given by Mansi.[1]

CANON 1

Summary. Ordinations and promotions made for pecuniary considerations are devoid of every dignity.

Text. **Following the example of the holy fathers and recognizing the obligation of our office, we absolutely forbid in virtue of the authority of the Apostolic See that anyone be ordained or promoted for money in the Church of God. Has anyone thus secured ordination or promotion in the Church, the rank acquired shall be devoid of every dignity.**[2]

Comment. The council opened its series of canons with a condemnation of simony. The social conditions and the ecclesiastico-political relations existing in Western Europe under the feudal system, contributed in no small measure to the growth of two notorious evils that afflicted the Church during that period, namely, simony and clerical incontinency, and of the two the former was productive of the greater real detriment to the Church. Efforts of civil and ecclesiastical authorities during and after the time of Charlemagne availed little to banish the evil from the sanctuary. It grew, and its growth kept pace with the increase of the civil power of the bishops and the consequent ever increasing influence that the state exercised over the affairs of the Church.[3] The episcopal

[1] Mansi, XXI, 277 ff.; Hefele-Leclercq, *Hist. des conciles*, V, 602–44; Hergenröther, *Handbuch d. allg. Kirchengeschichte*, II, 5th ed., 400–404; Robert, *Histoire du pape Calixte II*, Paris, 1891; *Dict. de théol. cath.*, VIII, 2628–37.

[2] This and the following canon are a textual reproduction of canons 1 and 2 of the Synod of Toulouse (1119) presided over by Callistus in person. Denzinger, no. 359.

[3] For a study of the antecedent history of the investiture conflict, cf. Drehmann, *Papst Leo IX u. die Simonie*, Leipzig, 1908.

office gradually came to be regarded as much a civil office as an ecclesiastical one. The Church was the holder of great landed possessions. In Germany three of the seven electors of the Empire were churchmen. Moreover, within the Empire was a number of prince-bishops and mitered abbots whose temporal rule was more powerful and more extensive than that of many secular barons. Nor was Germany an isolated instance. True, Germany was the greatest offender, but the same conditions prevailed in France, Spain, England, Scotland, and other countries. The result was the enslavement of the Church by the state. Rulers who endowed the Church with crown lands in gratitude for her work in bringing order out of chaos in Western Europe, thought they thereby acquired a right to have something to say in the nomination of those who were to be set over these lands. They claimed the right of investiture of spiritual offices. Elections were disputed. Church offices were obtained at the price of money, and noble families sought by dishonest methods, by bribery, intimidation, and other species of corruption to place their own members in episcopal and abbatial offices and at times even on the papal throne. Simony reached the highest point of its career in the eleventh century, which may well be termed its classic period. Papal and synodal decrees had indeed been issued against it but with little or no effect. The gigantic struggle initiated by Leo IX and Gregory VII and continued by their successors to restore the independence of the Church by freeing her from the demoralizing clutches of the state, was the beginning of the fall of simony. Enactments against the evil by popes and synods during the eleventh and twelfth centuries are very numerous.[4]

CANON 2

Summary. Only a priest may be made provost, archpriest, and dean; only a deacon may be archdeacon.

Text. No one except a priest shall be promoted to the dignity of provost, archpriest, or dean; and no one shall be made archdeacon unless he is a deacon.

Comment. The purpose of this canon was to put an end to the intrusion of laymen and of persons who had not received any major orders into

[4] Mention may be made of Clement II in the Roman synod, 1047 (Mansi, XIX, 627); Leo IX, Rome, 1049 (*id*., XIX, 721); Reims, 1049 (*id*., XIX, 741); Mainz, 1049 (*id*., XIX, 749); Nicholas II, Rome, 1059 (*id*., XIX, 909); Alexander II, Rome, 1063 (*id*., XIX, 1023); Gregory VII, Rome, 1073 (*id*., XX, 173); Rome, 1074 (*id*., XX, 408); Rome, 1078 (*id*., XX, 503); Rome, 1078 (*id*., XX, 509); Urban II, Melfi, 1089 (*id*., XX, 721); Piacenza, 1095 (*id*., XX, 805); Clermont, 1095 (*id*., XX, 916); Rome, 1099 (*id*., XX, 961); Callistus II, Toulouse, 1119 (*id*., XXI, 225); Reims, 1119 (*id*., XXI, 235); Second Lateran (1139), canons 1 and 2; Third Lateran (1179), canons 7 and 15; Fourth Lateran (1215), canon 63.

the offices mentioned. The prohibition had already found frequent expression in earlier synods. Because of their importance, not only from the standpoint of revenue but also from that of political expediency, the higher ecclesiastical offices offered an excellent vantage-ground for the realization of secular ambitions. Members of royal and noble families who had not received any sacred orders intruded themselves. Many of the men promoted by Charles Martel to the principal offices of the Church were laymen, who were either totally unworthy or else had naught but their military qualifications to recommend them; some of them refused afterwards to receive sacred orders.

CANON 3

Summary. Priests, deacons, and subdeacons are forbidden to live with women other than such as were permitted by the Nicene Council.

Text. We absolutely forbid priests, deacons, and subdeacons to associate with concubines and women, or to live with women other than such as the Nicene Council (canon 3) for reasons of necessity permitted, namely, the mother, sister, or aunt, or any such person concerning whom no suspicion could arise.[5]

CANON 4

Summary. Lay persons, no matter how pious they may be, have no authority to dispose of anything that belongs to the Church.

Text. In accordance with the decision of Pope Stephen,[6] we declare that lay persons, no matter how devout they may be, have no authority to dispose of anything belonging to the Church, but according to the Apostolic canon (39) the supervision of all ecclesiastical affairs belongs to the bishop, who shall administer them conformably to the will of God. If therefore any prince or other layman shall arrogate to himself the right of disposition, control, or ownership of ecclesiastical goods or properties, let him be judged guilty of sacrilege.

Comment. This canon was directed against lay investiture of ecclesiastical dignities. Like canon 10 of this series, it was one of the chief provisions of the Concordat of Worms, and contributed perhaps more than any other to the termination of the struggle between the papacy and the Empire. It asserts without compromise the principle that ecclesiastical jurisdiction can emanate only from the Church. As the power of con-

[5] In content this canon is closely related to that which in conciliar collections is given as canon 21 of this series. Denzinger, no. 360.

[6] A pseudo-Isidorian ordinance. Mansi, I, 892 c. 10. Denzinger, no. 361.

ferring sacred orders, so also does that of conferring benefices belong exclusively to the bishops. Among the Germanic tribes the national laws gave to the builder of a church, to the feudal lord or to the administrator, full right over the church built or founded by him. As it was his *ecclesia propria*, he exercised full authority over the ecclesiastics, whom, with the consent of the bishop in each case, he appointed and also dismissed at pleasure. In the course of the investiture conflict private right over churches was abolished, the *jus patronatus*, however, remained and the builder or feudal lord was granted the *jus praesentandi* whenever a vacancy occurred in the church. In the case of major benefices, that is, those of episcopal or supra-episcopal rank, ecclesiastical rights were safeguarded by a distinction between the spiritual and secular elements in the filling of such vacancies. The collation of the ecclesiastical offices was clearly distinguished from that of the temporalities. The bestowal of the former pertained obviously to the authority of the Church, that of the latter was conceded to the secular authority. Any encroachment on these ecclesiastical rights the council characterizes as a sacrilegious act. This canon was renewed by the Second and Third Lateran Councils in canons 25 and 14 respectively.

CANON 5

Summary. Marriages between blood-relatives are forbidden.

Text. **We forbid marriages between blood-relatives because they are forbidden by the divine and secular laws. Those who contract such alliances, as also their offspring, the divine laws not only ostracize but declare accursed, while the civil laws brand them as infamous and deprive them of hereditary rights. We, therefore, following the example of our fathers, declare and stigmatize them as infamous.**

Comment. The evil here condemned attained its widest extent during the eleventh and twelfth centuries. In the synods of Rome and Reims, both held in 1049, Leo IX made a determined effort to check it, but his measures went unheeded. Similar action was taken by subsequent popes, especially by Alexander II. In respect to the degrees within which marriage among blood-relatives was forbidden, the council adheres to the prevailing discipline, which prohibited marriage in the direct line ascending and descending *in infinitum* and in the collateral line to the seventh degree of consanguinity inclusive. Whether the impediment was at that time universally regarded as diriment is a matter of dispute. It seems certain, however, that in most countries the last three degrees were looked upon as impedient and not as diriment. The present canon was renewed

by the Second Lateran Council in canon 17, but even after that the binding force of the last two degrees was a matter of doubt. The Fourth Lateran Council in canon 50 limited the prohibition to the fourth degree of the collateral line. This discipline remained unchanged till the most recent matrimonial legislation, which retains the earlier law governing the impediment of consanguinity in the direct line but restricts it to the third degree of the collateral line.

CANON 6

Summary. Ordinations by Burdinus and the bishops consecrated by him are invalid.

***Text.* The ordinations made by the heresiarch Burdinus after his condemnation by the Roman Church, as also those made by the bishops consecrated by him after that point of time, we declare to be invalid.**

Comment. Mauritius Burdinus, once the archbishop of Braga, was the antipope set up by Henry V to succeed Paschal II (1099–1118). He took the name of Gregory VIII. At the time of his appointment to the papal throne he was under excommunication, incurred a few months previously when he crowned the Emperor, whose cause he had espoused. The ordinations made by him after this excommunication and by the bishops consecrated by him since then, the council declared to be null and void.[7]

CANON 7

Summary. No one is permitted to arrogate to himself the episcopal authority in matters pertaining to the *cura animarum* and the bestowal of benefices.

***Text.* No archdeacon, archpriest, provost, or dean shall bestow on another the care of souls or the prebends of a church without the decision or consent of the bishop; indeed, as the sacred canons point out, the care of souls and the disposition of ecclesiastical property are vested in the authority of the bishop. If anyone shall dare act contrary to this and arrogate to himself the power belonging to the bishop, let him be expelled from the Church.**

Comment. During the first three centuries of the Christian era there were no parish priests as we understand the term today. There was only one church in each diocese or district, namely, the episcopal church or cathedral, situated in the residential city of the bishop. This was the center to which people living in the city and its suburbs came on Sundays and festivals to attend divine services and from which the bishop exercised

[7] Cf. I Nicaea, note 106.

the *cura animarum* throughout the district. The gradual expansion of Christianity with the resultant growth in Church membership necessitated the erection of churches in rural districts. In these rural churches, which were under the direct administration of the bishop, divine services were conducted by priests residing at the cathedral. Further growth in membership brought about the organization during the fourth century of rural churches or parishes with a distinct administration of their own.[8] A similar situation and development we find in the West, though here, for obvious reasons, the change came less rapidly. The erection of rural churches kept pace with the spread of Christianity in the rural districts, in the temporal and spiritual administration of which the bishop was assisted by his archdeacon. The rapid Christianization of the people of Western Europe, however, rendered it impossible for the clergy of the episcopal church satisfactorily to supply the spiritual needs of a population scattered throughout the rural districts. To meet this exigency the larger rural centers were provided with their own churches, their own resources, and a permanent clergy. These were the baptismal or mother-churches, at which all the people of the parish were obliged to attend the principal mass on Sunday and to which they paid their tithes. All baptisms and burials took place here. Through the devotion of the faithful numerous chapels, *oratoria*, and *martyria* were erected within the parish, on Church lands and on monastery lands, and also on the estates of kings and nobles. All these chapels (*tituli minores*) which from the eighth century on multiplied rapidly and in which only instructions, the usual devotions and daily mass were permitted, had their own clergy but were dependent on and subject to the mother-church. At the head of the clergy attached to these mother-churches was the archpriest. He was the head also of all the clergy within his parish, that is, those attached to the various chapels, and was responsible for the proper discharge of their ministerial duties. His parish was called an archipresbyterate and he was subject in certain matters to the archdeacon, whose scope of authority covered a variety of activities; in fact, when necessity required, he was the bishop's representative in the exercise of the many duties of the episcopal office. During the Carlovingian period many of these chapels became independent parishes. Then, the division of large dioceses into several archidiaconal districts for the purpose of facilitating supervision necessitated the appointment in such dioceses of a corresponding number of archdeacons. Several of such large rural parishes, that is, archipresbyterates, constituted an archidiaconate at the head of which was an archdeacon. The archdeacon of the cathedral, who was usually the provost

[8] Cf. Council of Chalcedon, canons 6 and 7. The Synod of Neocaesarea (315) speaks in canons 13 and 14 of rural priests and bishops, the chorepiscopi.

or *praepositus* of the chapter, supervised the urban clergy, while the rural archdeacons, who were provosts of the principal churches in towns, had the supervision of the rural deans or archpriests. The authority of the archdeacons, both urban and rural, attained its height during the eleventh and twelfth centuries when they exercised within their territorial limits a quasi-episcopal jurisdiction. The power and influence of the deans or archpriests also kept pace with the march of time and events. The importance of these offices from an ecclesiastical but particularly from a secular viewpoint brought them under the influences of intrigue. Archdeacons and archpriests often overstepped the limits of their authority by usurping that of the bishop. This is the abuse which the canon condemned.[9]

CANON 8

Summary. Military persons are forbidden under penalty of anathema to invade or forcibly hold the city of Benevento.

***Text*. Desiring with the grace of God to protect the recognized possessions of the Holy Roman Church, we forbid under pain of anathema any military person to invade or forcibly hold Benevento, the city of St. Peter. If anyone act contrary to this, let him be anathematized.**

Comment. Benevento was the ancient seat of the Lombard rulers. Through Charlemagne it became part of the territory of the Church, with the provision, however, that he retain its government. In 891 it was taken by the Greek Emperor, but was restored to the Church in 962 through the assistance of Otto I. In subsequent years it was threatened by the Saracens and Greeks and in 1047 fell into the hands of the Normans. Henry III in 1053 drove out the Norman conquerors and turned the city together with the surrounding territory over to Leo IX in payment of the annual tax rendered to the Holy See by the diocese of Bamberg, which Henry had previously donated to the Roman Church. Shortly afterward, Benevento was retaken by the Normans. Leo IX placed himself at the head of a powerful army, but after a severe struggle the papal forces were defeated and Leo himself taken prisoner (1053). Regardless of their triumph, the Norman leaders now swore fealty to the sovereign pontiff

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[9] Zorell, "Die Entwickelung d. Parochialsystems," in *Archiv f. kath. Kirchenrecht*, 1902–03; Imbart de la Tour, *Les paroisses rurales du IVe au VIe siècles*, Paris, 1900; Thomassin, *Vetus et nova ecclesiae disciplina*, I, 221–30, 274–87; Schröder, *Die Entwickelung d. Archidiakonats bis zum 11. Jahrh.*, München, 1890; Stutz, *Gesch. d. kirchl. Benefizialwesens v. Anfang bis Alexander III*, Berlin, 1896; Sägmüller, *Die Entwickelung d. Archipresbyterats u. Dekanats bis zum Ende d. Karolingerreiches*, Tübingen, 1898.

and became loyal champions of the Holy See. Thenceforth Benevento belonged to the territory of the Church. In formulating this canon Callistus no doubt had in mind chiefly the terrible and wily Normans.

CANON 9

Summary. Those excommunicated by one bishop may not be restored by others.

Text. **We absolutely forbid that those who have been excommunicated by their own bishops be received into the communion of the Church by other bishops, abbots, and clerics.**

Comment. This prohibition is an ancient one, going back in all likelihood to Apostolic times. It was restated by the First General Council in canon 5 and frequently renewed in subsequent councils. In a period when confusion and violence were the order of the day and when the penalty of excommunication was resorted to without moderation, it was but natural that eventually there should have developed a contempt for it in certain circles.

CANON 10

Summary. A bishop consecrated after an uncanonical election shall be deposed.

Text. **No one shall be consecrated bishop who has not been canonically elected. If anyone dare do this, both the consecrator and the one consecrated shall be deposed without hope of reinstatement.**

Comment. With bishops possessing an extensive civil jurisdiction over the clergy and laity of their respective dioceses, their office acquired a political importance that could not but prove detrimental to the Church. The greater the political importance of the higher ecclesiastical offices became, the more the secular rulers strove to obtain control over them. One of the gravest evils resulting from this was the constant interference of lay authorities in episcopal elections. While in most countries such elections had become a mere formality, they were replaced in Germany by royal nomination, with the result that only such men were chosen or appointed to vacant sees as were willing to serve the interests of the emperor. In this canon, therefore, the council orders the observance of the ecclesiastical laws governing episcopal elections and threatens with perpetual deposition both the consecrator and the one consecrated in the event of violation.

CANON 11

Summary. To those who give aid to the Christians in the Orient is granted the remission of sins, and their families and possessions are taken under the protection of the Roman Church.

Text. For effectively crushing the tyranny of the infidels, we grant to those who go to Jerusalem and also to those who give aid toward the defense of the Christians, the remission of their sins and we take under the protection of St. Peter and the Roman Church their homes, their families, and all their belongings, as was already ordained by Pope Urban (II). Whoever, therefore, shall dare molest or seize these during the absence of their owners, shall incur excommunication. Those, however, who with a view of going to Jerusalem or to Spain (that is, against the Moors) are known to have attached the cross to their garments and afterward removed it, we command in virtue of our Apostolic authority to replace it and begin the journey within a year from the coming Easter. Otherwise we shall excommunicate them and interdict within their territory all divine service except the baptism of infants and the administration of the last rites to the dying.

Comment. The purpose of this canon was to promote the cause of the crusades against the Saracens in the Orient and against the Moors in Spain. The "remissions of sins" spoken of refers to the plenary indulgence granted to all who should either undertake the journey or in other ways contribute toward the furtherance of the cause, and is not to be understood as the actual remission by the pope of sins not yet remitted by the sacrament of penance. The property of those taking part in the crusade was to be regarded as sacred. Many who in the first fervor of enthusiasm had taken the cross and pledged themselves to undertake the journey, later manifested indifference in its execution. These the Pope commanded to begin the journey within a year from the coming Easter. The interdict, threatened in case of failure to heed the command, applied to princes and all others who owned vast landed estates.

CANON 12

Summary. The property of the *porticani* dying without heirs is not to be disposed of in a manner contrary to the wish of the one deceased.

Text. With the advice of our brethren and of the entire Curia, as well as with the will and consent of the prefect, we decree the abolition of that evil custom which has hitherto prevailed among the *porticani,* namely, of disposing, contrary to the wish of the one deceased, of the property of *porticani* dying without heirs; with this

understanding, however, that in future the *porticani* remain faithful to the Roman Church, to us and to our successors.

Comment. The *porticani*, it seems, were those people who dwelled in the Vatican territory, or more properly, in the neighborhood of the portico of St. Peter's. They were chiefly travelers and merchants; their *scholae* or quarters were located principally on the left side of the Basilica. In making obedience to the Roman Church, to himself and to his successors, a condition of the abolition of that custom, Callistus had in mind the division among the *porticani* consequent upon the schism created by the Emperor in setting up Burdinus as antipope.

CANON 13

Summary. If anyone violates the truce of God and after the third admonition does not make satisfaction, he shall be anathematized.

***Text.* If anyone shall violate the truce of God he shall be admonished three times by the bishop to make satisfaction. If he disregards the third admonition the bishop, either with the advice of the metropolitan or with that of two or one of the neighboring bishops, shall pronounce the sentence of anathema against the violator and in writing denounce him to all the bishops.**

Comment. The "truce of God" (*treuga Dei*) was a temporary suspension of hostilities, instituted to replace the "peace of God" (*pax Dei*) when the latter, which implied a perpetual suspension, had proved ineffective. With the dissolution of the Carlovingian Empire, anarchy of the worst type set in, in consequence of which the two following centuries may well be called the nadir of order and civilization. It was a period of murder and rapine, of license and tyranny, and above all there raged an epidemic of private wars. What the conditions were even as late as the end of the eleventh century we learn from the address of Urban II to the multitude that had assembled for the Synod of Clermont (1095).

The truce of God had its origin in the second quarter of the eleventh century and was the means employed by the Church to do what the lay authorities had been powerless to do, namely, to restore and enforce respect for public peace. In its earliest form, it seems, it was a decision that no one should attack his enemy from nine o'clock Saturday night to one o'clock Monday morning, for the reason *ut omnis homo persolvat debitum honorem diei dominico*. Subsequently this prohibition was extended, in some localities to certain days of the week, for instance, Thursday, Friday, and Saturday, in memory of the ascension, passion, and resurrection, to which mysteries these three days were consecrated; in other places, to

the Ember days and certain feast days, as the Exaltation of the Cross, All Saints, etc. Later the seasons of Advent and Lent were included in the truce. Uniformity as to the time and duration of the truce was brought about by the Synod of Clermont in its decision that the truce shall be observed "*ab Adventu Domini usque ad octavam Epiphaniae et a Septuagesima usque as octavam Pentecostes, praeterea, ab occasu solis in quarta feria usque ad ortum solis in secunda feria.*" This canon became the general rule. It was renewed by the Second and Third Lateran Councils in canons 12 and 21 respectively. The penalty for violation was excommunication. It is with the penalty that the present canon concerns itself.[10]

CANON 14

Summary. Laymen are absolutely forbidden to remove offerings from the altars of Roman churches.

Text. Following the canons of the holy fathers, we absolutely and under penalty of anathema forbid laymen to remove the offerings from the altars of the churches of St. Peter, of The Savior (Lateran Basilica), of St. Mary Rotund, in a word, from the altars of any of the churches or from the crosses. By our Apostolic authority we forbid also the fortifying of churches and their conversion to profane uses.

CANON 15

Summary. Counterfeiters of money shall be excommunicated.

Text. Whoever manufactures or knowingly expends counterfeit money, shall be cut off from the communion of the faithful (excommunicated) as one accursed, as an oppressor of the poor and a disturber of the city.

CANON 16

Summary. Robbers of pilgrims and of merchants shall be excommunicated.

Text. If anyone shall dare attack pilgrims going to Rome to visit the shrines of the Apostles and the oratories of other saints and rob them of the things they have with them, or exact from merchants new imposts and tolls, let him be excommunicated till he has made satisfaction.

Comment. An excellent description of prevailing conditions, conditions that were by no means peculiar to his pontificate, is given by Gregory VII

[10] Huberti, *Gottesfrieden und Landfrieden*, Ansbach, 1892; Hefele-Leclercq, V, *passim*.

in a letter written in 1074 to the bishops of France. He says: *Omnes malitia quasi quodam pestilentiae morbo repleti, horrenda et multum execranda facinora multoties nemine impellente committunt; nihil humani nihilque divini attendunt; perjuria sacrilega, incestum perpetrare, sese invicem tradere, pro nihilo ducunt et, quod nusquam terrarum est, cives, propinqui fratres, etiam alii alios propter cupiditatem capiunt, et omnia bona eorum ab illis extorquentes, vitam in extrema miseria finire faciunt.* With regard to the matter with which the canon deals, he says in the same letter: *Peregrinos ad Apostolorum limina euntes et redeuntes, uti cuique opportunum fit, capientes in carceres trudunt, et acrioribus quam paganus aliquis, tormentis afficientes, saepe ab illis plusquam habeant pro redemtione exigunt.*[11]

CANON 17

Summary. Abbots and monks may not have the *cura animarum.*

***Text.* We forbid abbots and monks to impose public penances, to visit the sick, to administer extreme unction, and to sing public masses. The chrism, holy oil, consecration of altars, and ordination of clerics they shall obtain from the bishops in whose dioceses they reside.**

Comment. In the earliest ages of the Church, abbots and monks were laymen. For divine service and the reception of the sacraments they proceeded in a body to the nearest church. When later by reason of their large number this became impractical, they built their own monastic churches, and the abbot or some other member of the community was invested with priestly orders to serve its spiritual needs. From the fourth century onward the number of monks raised to the priesthood and exercising spiritual functions gradually increased. This course, however, was not to go unchallenged, and as late as 1096 the Synod of Nimes in canon 2 condemned the statement that monks may not become priests, adding that Pope Gregory the Great, Martin of Tours, Augustine of Canterbury, and others had been monks.[12] In the following canon the synod went so far as to declare that priests who are monks are better qualified to perform spiritual functions than are the secular priests. The rapid expansion of the Christian religion and the consequent demand for priests naturally invited them into the field of parochial activity. The discipline governing the care of souls and the administration of parishes by monks had not always been

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[11] *Lib. II, epist. V ad episcopos Francorum,* Mansi, XX, 129 ff. The writings of Gregory VII are to be found under the title, *Gregorii VII registri sive epistolarum libri,* in Mansi, XX, 60–391.

[12] Mansi, XX, 931.

uniform, owing to the different views taken by different bishops and popes. Synods before and after the tenth century permitted and prohibited monks to have the care of souls outside of those within the monastery. The reason for the prohibition is to be found in the ever increasing encroachment of the monks on parochial ministrations, and much more so in their frequent and flagrant invasion of episcopal rights and privileges. That causes of this nature were at the bottom of the present canon, can scarcely be doubted.[13]

Regarding ordinations, the Second Council of Nicaea in canon 14 permitted abbots, provided they were priests and had received the solemn rite of benediction, to confer tonsure and advance their monks to the lectorate. This privilege was gradually extended until it embraced all the minor orders. Other orders, as our canon rules, must be conferred by the bishop in whose diocese the monastery is located.[14]

CANON 18

Summary. The appointment of priests to churches belongs to the bishops, and without their consent they may not receive tithes and churches from laymen.

Text. Priests shall be appointed to parochial churches by the bishops, to whom they shall be responsible for the care of souls and other matters pertaining to them. They are not permitted to receive tithes and churches from laics without the will and consent of the bishops. If they act otherwise, let them be subject to the canonical penalties.

Comment. The first part of this canon was directed against the abuse by which patrons usurped the authority of the bishops in the appointment of priests to those churches over which they exercised the right of patronage, particularly the *jus praesentandi*. The evil was an old one and had been frequently outlawed by popes and synods. In canon 8 of the Synod of Nimes (1096) Urban II decreed: *Clericus vel monachus qui ecclesiasticum de manu laici susceperit beneficium, quia non intravit per ostium sed ascendit aliunde, sicut fur et latro ab eodem separetur officio.*[15]

The second part forbids priests to accept tithes and churches from laymen without the approval of their respective bishops. The tithes here referred to are those ecclesiastical taxes which in the course of time had become alienated from the churches by lay proprietors. This alienation came about in various ways. The secularization inaugurated during the

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[13] Cf. Hefele-Leclercq, V, 643 f.

[14] Thomassin, *op. cit.*, I, lib. III, cap. 13 f.

[15] Mansi, XX, 936; Hefele-Leclercq, V, 449. Cf. canon 15 of the Synod of Clermont (1095), Mansi, XX, 817.

Merovingian period, especially by Charles Martel, brought about the transfer of much ecclesiastical property and its tithes or the tithes alone to laymen. It was Charles' way of compensating his partisans. In subsequent times, under pressure of circumstances, even bishops and abbots resorted to such alienation to secure vassals and protectors against violence and the invasion of their civil rights. Then again, not only churches but also ecclesiastical property with its tithes or the tithes alone were taken forcibly by laymen. Finally, when churches, which had once been the property of private individuals, became parish churches subject to the bishops, the former owner frequently appropriated the tithes belonging to that church. In his autumn synod of 1078 (canon 6) Gregory VII demanded from the laity the return to the Church of all tithes, no matter how or from whom they had received them, and declared guilty of sacrilege all who refused obedience to his decree. This demand was renewed by subsequent popes and synods, but to expect the return to the Church of tithes that had for centuries been in the possession of laymen, was expecting too much. They preferred to give them to monasteries or to their friends among the secular clergy. The churches that had been usurped by laymen were often bought by monks, or they were handed over by the usurper to the secular clergy. It was this acceptance of tithes and churches from laymen by monks and secular clergy without the approval of the bishops, that the present canon prohibited.[16]

CANON 19

Summary. Taxes paid to bishops by monks since Gregory VII must be continued. Monks may not by prescription acquire the possessions of churches and of bishops.

Text. The tax (*servitium*) which monasteries and their churches have rendered to the bishops since the time of Gregory VII, shall be continued. We absolutely forbid abbots and monks to acquire by prescription after thirty years the possessions of churches and of bishops.

Comment. Originally all monasteries within a diocese were under the authority of the bishop. The Council of Chalcedon in canon 4 expressed this in the form of a law, and Justinian decreed that all complaints against clerics and monks should be laid before the bishop, "because they are subject to him." [17] The Synod of Orleans (511) in canon 21 ruled that

[16] Thomassin, *op. cit.*, III, lib. I, cap. 1–11; Stutz, *Gesch. d. Beneficialwesens bis Alexander III;* Perels, *Die kirchl Zehnten im karoling. Reiche*, Berlin, 1904; Stutz, "Das karoling. Zehngebot," in *Zeitschr. d. Savigny-Stiftung f. Rechtsgesch.* XXIX (1909), 191–240; Viard, *Hist. de la dîme eccl. principalement en France jusqu' au décret de Gratien*, Dijon, 1909.

[17] *Novella* 123, c. 21.

monks are under the authority of the abbot, but the abbot under that of the bishop.[18] In consequence, however, of episcopal oppression which frequently assumed the worst form of tyranny and rapine, monasteries were by degrees taken under the protection of the popes. At a later period this papal protection often developed into exemption from episcopal authority, at least so far as the temporalities were concerned. Beginning with the eleventh century, exemptions multiplied rapidly. Not only individual monasteries but entire orders obtained exemption in all things from the authority of the bishop. Since Urban II papal protection practically meant exemption from episcopal authority. But such exemption did not release monasteries and their churches from the obligation of paying to the local ordinary an annual pension (*servitium*). To put a stop to the oppressive exactions of the bishops, Gregory VII in 1078 not only condemned such excesses but also established a limit beyond which bishops were forbidden to extend their demands. It is this rule of Gregory that the council here confirms.

CANON 20

Summary. Churches and their possessions, as well as the persons and things connected with them, shall remain safe and unmolested.

Text. **Having in mind the example of our fathers and discharging the duty of our pastoral office, we decree that churches and their possessions, as well as the persons connected with them, namely, clerics and monks and their servants (*conversi*), also the laborers and the things they use, shall remain safe and unmolested. If anyone shall dare act contrary to this and, recognizing his crime, does not within the space of thirty days make proper amends, let him be cut off from the Church and anathematized.**

CANON 21

Summary. Clerics in major orders may not marry, and marriages already contracted must be dissolved.

Text. **We absolutely forbid priests, deacons, subdeacons, and monks to have concubines or to contract marriage. We decree in accordance with the definitions of the sacred canons, that marriages already contracted by such persons must be dissolved, and that the persons be condemned to do penance.**

Comment. This canon, together with the preceding and following canons, does not appear to have originated in the First Lateran Council.

[18] C. 16, C. XVIII, q. 2.

This seems to be true especially of the present one; for the matter dealt with in it had already been considered in canon 3, and it is hardly probable that the council dealt with the same subject in two distinct decrees. It is very probable that these three canons originated in a provincial council under Urban II and were later wrongly ascribed to this Council of the Lateran.

Although at the time of our council clerical celibacy had long been an established rule for ecclesiastics in major orders, the extent of its observance was reduced practically to a minimum during the period of war and moral disorder that followed the dissolution of the Carlovingian Empire. In the maelstrom of corruption and lawlessness that prevailed, clerical morality reached its lowest ebb, and all sense of vocation had apparently disappeared. During this dark period, this "Iron Age," there was no dearth of synodal enactments directed against the evil. But when all too frequently the government of monasteries was usurped by rude and ignorant laymen, and when into bishoprics were intruded creatures whose only gods were Greed and Lust, synodal decrees meant nothing. The reforms initiated by Gregory VII with so much determination and vigorously continued by his successors, struck at the root of the evil and finally brought it under control.[19]

CANON 22

Summary. The alienation of possessions of the exarchate of Ravenna is condemned, and the ordinations made by the intruders are invalid.

Text. **The alienation that has been made especially by Otto, Guido, Jerome, and perhaps by Philip of possessions of the exarchate of Ravenna, we condemn. In a general way we declare invalid the alienations in whatever manner made by bishops and abbots whether intruded or canonically elected, and also the ordinations conferred by them whether with the consent of the clergy of the Church or si-**

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[19] The earliest conciliar enactment on the subject of clerical celibacy is canon 33 of the Spanish Synod of Elvira (305), which imposed it on the three higher orders, bishops, priests, and deacons. If they continued to live with their wives and bring forth children after their ordination, they were to be deposed. An attempt to impose celibacy on the clergy was made at the first general council, but it seems the arguments of Paphnutius against it prevailed. The council then contented itself with the prohibition expressed in canon 3. Justinian permitted no one to be consecrated bishop who had children. The Synod of Melfi (1089) in canon 12 ruled that a subdeacon who refused to separate himself from his wife, was to be deprived of his office and benefice. If, on being warned by the bishop, he did not put her away, the overlord was permitted to take her as a slave. Leclercq, "La législation conciliaire relative au célibat ecclésiastique," in *Histoire des conciles*, II, 1321–48, where an abundant literature on the subject is given.

moniacally. We also absolutely forbid any cleric in any way to alienate his prebend or any ecclesiastical benefice. If he has presumed to do this in the past or shall presume to do so in the future, his action shall be null and he shall be subject to the canonical penalties.[20]

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[20] These were the four schismatical successors of the antipope Guibert in the archiepiscopal see of Ravenna. Guibert was intruded into the Roman see by Henry IV.

THE TENTH GENERAL COUNCIL (1139)

Second Lateran Council

History. The day that witnessed the election of Innocent II (February 14, 1130) to the highest honor in Christendom, saw also a few hours later the election of Cardinal Pietro Pierleone as antipope. He took the name of Anacletus II. Both claimants received episcopal consecration on the same day, February 23, the former in Santa Maria Nuova, the latter in St. Peter's. By the lavish expenditure of his immense wealth and the plundered treasures of the churches, Anacletus was able to maintain the confidence and favor of the Roman people, with the result that Innocent was for a long time prevented from performing the duties of his office in Rome. When he learned that the influential family of the Frangipani, which had been one of his chief supporters, had deserted his cause and gone over to the antipope, he retired to the family fortress in Trastevere. Not feeling safe even here, he fled by way of Pisa and Genoa to France where he secured the support of Louis VI and, through the activities of St. Bernard, St. Norbert, and others, obtained the support also of the French and German bishops. On November 18, 1130, he presided over a great synod held at Clermont, which was attended by the archbishops of Lyons, Bourges, Vienne, Narbonne, Arles, Tarragona (in Spain), Auch, Aix, and Tarantaise with their suffragans and many abbots.[1] On October 18, 1131, he opened and presided over another great synod held at Reims, which came to a close on October 29. The number of bishops in attendance is uncertain. Some sources speak of 50, others of 300, while a third tells us that it was the most largely attended synod ever held in France. Besides the French, in attendance were representatives from Germany, England, Aragon, and Castile.[2] Both of these synods enacted a number of salutary disciplinary decrees. In 1132, Innocent held a synod at Piacenza,[3] and in 1135 another at Pisa, which was attended by bishops from England, Germany, France, Hungary, Italy, and other countries.[4]

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1 Mansi, XXI, 437; Hefele-Leclercq, V, 687 f.
2 Mansi, XXI, 453; Hefele-Leclercq, V, 694–99.
3 Mansi, XXI, 479; Hefele-Leclercq, V, 700 ff.
4 Mansi, XXI, 487; Hefele-Leclercq, V, 706 ff.

His cause was steadily gaining ground, when the death of Anacletus in January, 1138, left him in undisturbed possession of the Eternal City and the papacy.[5]

To remove the evil consequences of the eight year schism, to condemn certain current errors, and correct abuses among the clergy and laity, Innocent convened the Second Council of the Lateran. It began its sessions on April 4, 1139, and was attended by nearly a thousand prelates: patriarchs, archbishops, bishops, and other ecclesiastical superiors, representing most of the Christian nations. It was opened by the Pope with a discourse in which he declared null and void the official acts of Anacletus and deposed all who had been appointed or ordained by him and his chief partisans, Gerard of Angouleme and Gilo of Tusculum. Roger, the king of Sicily, who also had been a staunch adherent of the antipope, was excommunicated for keeping the schism alive in southern Italy. The council condemned the errors of the Petrobrusians and the Henricians, the followers of Peter of Bruys and Arnold of Brescia. Archbishop Theobald of Canterbury, who was present with five English bishops and four abbots, was invested with the pallium, and St. Sturmius, the first abbot of Fulda, was canonized. Whether the Pope in this council made a rule restricting the election of the popes to the cardinals, thus eliminating whatever participation had been left to the lower clergy and people by Nicholas II (1059–61), is a point that is disputed, though it appears not at all improbable when we consider the circumstances of his own election and those also of the election of Anacletus. One of the purposes of the council was to remove the evils of an eight-year schism, and it seems more than merely probable that the Pope was not content with this only, but went a step farther to prevent the repetition of such a schism from that particular contributing cause. Moreover, such a rule seems to form a necessary link in the historical development of papal elections.[6]

In conclusion the council drew up thirty canons for the correction of moral and disciplinary abuses of the time. Twenty-eight of these are in great measure a reproduction of decrees promulgated by the Synods of

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[5] For the circumstances surrounding the election of Innocent and his activities till the opening of the council, cf. Hefele-Leclercq, V, 676–721. Also article "Anacletus II" in *Catholic Encyclopedia.*

[6] Our only authority for the enactment of such a law by Innocent is Onofrio Panvini (d. 1568) in his work *De origine cardinalium*, ed. Mai, *Spicileg. Roman.* IX, 495. The passage is given by Grauert (*Hist. Jahrbuch d. Görresgesellschaft*, I (1880), 595, *Ein angebliches Papstwahlgesetz v. 1139*), who, however, with Sägmüller (*Die Tätigkeit u. Stellung der Kardinäle*, Freiburg, 1896, p. 135), does not accept the report of Panvini as trustworthy. In favor of its trustworthiness are Hefele (V, 737 f.) and Bernhardi (*Jahrbücher d. deut. Geschichte unter Konrad* III, I, München, 1883, p. 156). Cf. also Wurm, *Die Papstwahl; Ihre Geschichte u. Gebräuche* (Köln, 1902), pp. 32 f. For the decree of Nicholas II, cf. Grauert, *l. c.*, pp. 502–94, and Hefele, IV, 1139–65.

Clermont (1130) and Reims (1131). These thirty canons are all that we have of the acts of this council.[7]

CANON 1

Summary. Anyone simoniacally ordained shall be deposed.

Text. **We decree that if anyone has been ordained simoniacally, he shall lose the office thus illicitly obtained.**[8]

CANON 2

Summary. If anyone has obtained ecclesiastical promotion simoniacally, he shall lose the honor thus acquired, and buyer and seller as well as intermediaries shall be condemned.

Text. **If anyone, impelled by the execrable vice of avarice, has by means of money obtained a prebend, priory, deanery, or any ecclesiastical honor or promotion, or any ecclesiastical sacrament, as chrism, holy oil, or the consecration of altars and churches, he shall be deprived of the honor thus illicitly acquired, and buyer and seller and intermediary agent shall be stigmatized with the mark of infamy. Neither for provisions nor under pretense of some custom shall something be demanded from anyone either before or after, nor shall anyone presume to give, because it is simoniacal; but freely and without any price shall he enjoy the dignity or benefice conferred on him.**[9]

Comment. This canon is directed against simony in the acquisition of benefices and ecclesiastical promotions and in the matter of certain sacramentals. Those guilty are to lose what they illicitly obtained; buyer, seller, and intermediary, that is, the one who conducts the transaction between the contracting parties, are to be branded as infamous. Nothing shall be demanded for chrism, holy oil, or the consecration of altars and churches. This is an old prohibition. In 813 a synod held at Châlons-sur-Saône in canon 16 ruled: *Omnes uno consensu statuimus, ne sicut pro dedicandis basilicis et dandis ordinibus nihil accipiendum est, ita etiam pro balsamo sive luminaribus emendis, nihil presbyteri chrisma accepturi dent.* And then added: *Episcopi itaque de facultatibus ecclesiae balsamum emant et luminaria singuli in suis ecclesiis concinnanda provideant.*[10] Neither before nor after the bestowal of a benefice or the consecration of an altar or a church is anything to be demanded. Some there were who maintained that

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[7] Mansi, XXI, 523 ff.; Hefele-Leclercq, V, 721–46; Hergenröther, *Handbuch d. allg. Kirchengeschichte*, II, 5th ed., 445 ff.; *Dict. de théol. catholique*, VIII, 2637–44.

[8] Identical with canon 1 of Clermont (1130) and renewed by Reims (1131).

[9] An expansion of canon 1 of Clermont and Reims and analogous to one of Pisa (1135) and to canons 1, 3, and 4 of London (1138). Denzinger, no. 364.

[10] Mansi, XIV, 97; Hefele-Leclercq, III, 1144.

simony is then committed when something is exacted before a benefice is bestowed, not however when the demand is made after its bestowal. This subterfuge had long ago been dissipated by St. Basil in a letter to the chorepiscopi of his diocese, among whom simony was rife: *Putant se non delinquere quod non ante sed post ordinationem accipiunt. Accipere autem accipere est, quomodocumque fiat.*[11]

Nor shall anyone presume to give, that is, he on whom a benefice or honor has been conferred, or whose church has been consecrated, etc. All of these prohibitions are, of course, based on the command of Christ to His Apostles: *Gratis accepistis, gratis date.*

CANON 3

Summary. Those excommunicated by one bishop may not be restored by others. Communication with one excommunicated entails the same censure.

***Text.* We absolutely forbid that those who have been excommunicated by their own bishops be received by others. He who shall dare communicate knowingly with one excommunicated before he is absolved by the one who excommunicated him, shall incur the same penalty.**

Comment. The first part of this canon is an old ordinance and is met with again and again in the synods of this and preceding periods. The second part also is a reaffirmation of the ancient and traditional policy of the Church toward those who hold unlawful intercourse with one excommunicated, as is attested by Rom. 16:17; Tit. 3:10; II John 10:11; by the Synod of Antioch (341) in canons 1, 2, 4, and by numerous subsequent synodal decrees. In the early Church there was only one kind of excommunication properly so called, that known later as *excommunicatio major.*[12] It was the extreme ecclesiastical penalty for laymen; for guilty clerics the punishment was deposition, that is, reduction to the ranks of

[11] *Epist.* LIII.

[12] Beside the complete exclusion from the Church by excommunication properly so called, there existed in early times a milder form of punishment, also known sometimes as excommunication, but really only a temporary suspension of communication between a bishop and his episcopal brethren, imposed by reason of an act deemed reprehensible and deserving of chastisement. Such bishops were not, properly speaking, excommunicated. It did not interfere with the government of their dioceses or with any of their episcopal duties. It simply meant that they were deprived for a specified period of time of the consolation of intercourse or communion with their colleagues. It was most frequently imposed by provincial synods on bishops who without good reason neglected to attend such synods. Thus the Fifth Synod of Carthage (401) in canon 10: If bishops for a good reason cannot attend the provincial synods, they must make that fact known in writing; *nisi autem rationem impedimenti sui apud primatem suum reddiderint, ecclesiae suae communione debent esse contenti* (c.10, D.XVIII); that of Arles (452) in canon 19: If a bishop neglects to attend a synod or leaves before it has

the laity. Later on, when deposition was replaced by suspension, clerics also became subject to excommunication. Till the thirteenth century, when the *excommunicatio minor* became a definite and independent instrument of ecclesiastical discipline, this was the excommunication incurred by those who held prohibited intercourse with one excommunicated.[13] The *excommunicatio minor* was identical with penitential exclusion in early times, that is, it was identical with the state of the penitent during his period of public penance. It consisted chiefly in the exclusion of those who had incurred it from the reception of the sacraments, but indirectly it entailed also other consequences. Beginning in the thirteenth century, the penalty incurred by prohibited intercourse with the excommunicated was minor excommunication, and till the beginning of the fifteenth century no exception was made of any class of excommunicated persons. The distinction between *excommunicati vitandi* and *tolerati* dates from the constitution *Ad evitanda scandala*, published in 1418 at the Council of Constance by Martin V. It forms Article VII of the concordat concluded at Constance with the German nation, but eventually became universal law. Till then intercourse with all excommunicated persons, whether they had incurred major or minor excommunication, had to be avoided when once they were known as such. This constitution restricted unlawful communication to the *notorii clericorum percussores* and to those formally named as persons to be avoided. With the further reduction in modern times of this twofold class of *vitandi*, minor excommunication became a matter of little consequence and, after the publication by Pius IX of the constitution *Apostolicae Sedis* (1869), ceased to exist.[14]

CANON 4

Summary. Bishops and clerics should so conduct themselves that they do not offend those whose model and example they should be.

Text. **We command that bishops and clerics in mind and in body strive to be pleasing to God and to men, and not by superfluity, dis-**

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come to an end, *alienatum se a fratrum communione cognoscat; nec eum recipi liceat, nisi in sequenti synodo fuerit absolutus* (c. 12, D.XVIII); similarly the Synods of Agde (506) in canon 35 (c. 13, D.XVIII), of Tarragona (516) in canon 6 (c. 14, D.XVIII, etc. The same penalty is imposed by the Sixth Synod of Carthage (401) in canon 14 on a bishop who should promote a monk not of his diocese to the clerical state, or appoint such a one superior of a monastery within his diocese (Hefele-Leclercq, II, 129).

[13] Innocent III distinguished between intercourse or communication knowingly held with one excommunicated *in crimine criminoso*, that is, giving advice or aid of any kind in the crime for which the excommunication was incurred, and ordinary communication, that is, ordinary conversation with, or praying or eating with the one excommunicated. The former was punished with major, the latter with minor excommunication (c. 29, X, De sentent. excomm., V, 39).

[14] Kober, *Der Kirchenbann*, Tübingen, 1863; Hollweck, *Die kirchlichen Strafgesetze*, Mainz, 1899.

sensions, or the color of their clothes, nor in their tonsure, offend the sight of those whose model and example they ought to be; but rather let them manifest the sanctity that should be part and parcel of their office. But if, admonished by their bishops, they do not amend, let them be deprived of their benefices.[15]

CANON 5

Summary. Possessions of deceased bishops must remain in charge of the steward and clergy and must not be seized by anyone.

Text. We decree that that which was enacted in the Council of Chalcedon (canon 22) be inviolately observed; namely, that the possessions of deceased bishops be not seized by anyone, but that they remain in the hands of the steward and the clergy for the needs of the Church and his successor. That detestable and barbarous rapacity shall henceforth cease. If anyone in the future shall dare attempt this, let him be excommunicated. Those who seize the possessions of deceased priests or clerics, let them be subjected to the same penalty.[16]

CANON 6

Summary. Clerics living with women shall be deprived of their office and benefice.

Text. We also decree that those who in the subdiaconate and higher orders have contracted marriage or have concubines, be deprived of their office and ecclesiastical benefice. For since they should be and be called the temple of God, the vessel of the Lord, the abode of the Holy Spirit, it is unbecoming that they indulge in marriage and in impurities.[17]

CANON 7

Summary. Masses celebrated by members of the clergy who have wives or concubines are not to be attended by anyone.

Text. Following in the footsteps of our predecessors, the Roman pontiffs Gregory VII, Urban, and Paschal, we command that no one attend the masses of those who are known to have wives or concubines. But that the law of continence and purity, so pleasing to God, may become more general among persons constituted in sacred orders, we decree that bishops, priests, deacons, subdeacons, canons regular, monks, and professed clerics (*conversi*) who, transgressing

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[15] Identical with canon 2 of Clermont and Reims.
[16] Identical with canon 3 of Clermont and Reims.
[17] Identical with canon 4 of Clermont and Reims. Cf. canon 21 of I Lateran.

the holy precept, have dared to contract marriage, shall be separated. For a union of this kind which has been contracted in violation of the ecclesiastical law, we do not regard as matrimony. Those who have been separated from each other, shall do penance commensurate with such excesses.

CANON 8

Summary. This applies also to nuns.

Text. We decree that the same be observed with regard to nuns if, which God forbid, they attempt to marry.

CANON 9

Summary. Monks and canons regular are not to study jurisprudence and medicine for the sake of temporal gain.

Text. An evil and detestable custom, we understand, has grown up in the form that monks and canons regular, after having received the habit and made profession, despite the rule of the holy masters Benedict and Augustine, study jurisprudence and medicine for the sake of temporal gain. Instead of devoting themselves to psalmody and hymns, they are led by the impulses of avarice to make themselves defenders of causes and, confiding in the support of a splendid voice, confuse by the variety of their statements what is just and unjust, right and wrong. The imperial constitutions, however, testify that it is absurd and disgraceful for clerics to seek to become experts in forensic disputations. We decree, therefore, in virtue of our Apostolic authority, that offenders of this kind be severely punished. Moreover, the care of souls being neglected and the purpose of their order being set aside, they promise health in return for detestable money and thus make themselves physicians of human bodies. Since an impure eye is the messenger of an impure heart, those things about which good people blush to speak, religion ought not to treat (that is, religious ought to avoid). Therefore, that the monastic order as well as the order of canons may be pleasing to God and be conserved inviolate in their holy purposes, we forbid in virtue of our Apostolic authority that this be done in the future. Bishops, abbots, and priors consenting to such outrageous practice and not correcting it, shall be deprived of their honors and cut off from the Church.[18]

Comment. The first part of this decree forbids monks and canons regular to engage in the practice of civil law, while the second makes the

[18] Identical with canon 5 of Clermont.

same prohibition in regard to the practice of medicine. In early times it was common for clerics to devote a portion of their time to these avocations, nor was such practice disapproved by the Church. Later, however, when abuses multiplied, especially in the practice of medicine, the Church took steps in the twelfth century to express its disapproval of such occupations by clerics. The private study of these sciences and the public teaching of them were, of course, not forbidden. What the canons chiefly condemn is the secularity of the motive back of the practice. The words of the second part of the canon, *cumque impudicus oculus impudici cordis sit nuntius*, would seem to suggest that there were not wanting monks and canons regular who practiced medicine not only from the motive of avarice, but also because it afforded them freer access to the houses of women.

CANON 10

Summary. Church tithes may not be appropriated by laymen. Likewise laymen possessing churches must return them to the bishops. Ecclesiastical honors are not to be conferred on young men.

Text. In virtue of our Apostolic authority, we forbid that tithes of churches which canonical authority shows to have been given for pious purposes be possessed by laymen. Whether they have received them from bishops, kings, or other persons, unless they are returned to the Church, the possessors shall be judged guilty of sacrilege and shall incur the danger of eternal damnation. We command also that laymen who hold churches shall either return them to the bishops or incur excommunication. We confirm, moreover, and command that no one shall be promoted to the office of archdeacon or dean, unless he be a deacon or priest; those archdeacons and deans or provosts who exist below the orders just mentioned, if they refuse to be ordained, let them be deprived of the honor received.[19] We forbid, moreover, that the aforesaid honors be bestowed upon young men, even though they are constituted in sacred orders; but let them be conferred on those who are noted for prudence and rectitude of life. We command, moreover, that churches be not committed to hired priests; but let every church that possesses the means of support have its own priest.

CANON 11

Summary. Clerics and other people, as well as their animals, shall at all times be secure.

Text. We command also that priests, clerics, monks, travelers, merchants, country people going and returning, and those engaged

[19] Cf. canon 2 of I Lateran.

in agriculture, as well as the animals with which they till the soil and that carry the seeds to the field, and also their sheep, shall at all times be secure.[20]

CANON 12

Summary. Rules governing the truce of God. Bishops should do all in their power to establish peace.

Text. We decree that the truce of God be strictly observed by all from the setting of the sun on Wednesday to its rising on Monday, and from Advent to the octave of Epiphany and from Quinquagesima to the octave of Easter. If anyone shall violate it and does not make satisfaction after the third admonition, the bishop shall direct against him the sentence of excommunication and in writing shall announce his action to the neighboring bishops. No bishops shall restore to communion the one excommunicated; indeed every bishop should confirm the sentence made known to him in writing. But if anyone (that is, any bishop) shall dare violate this injunction, he shall jeopardize his order. And since "a threefold cord is less easily broken" (Eccles. 4: 12), we command the bishops, having in mind only God and the salvation of the people, and having discarded all tepidity, offer each other mutual counsel and assistance for firmly establishing peace; nor should they be swayed in this by the love or hatred of anybody. But if anyone be found to be tepid in this work of God, let him incur the loss of his dignity.

Comment. The two foregoing decrees deal with the truce of God, of which something has already been said in canon 17 of the foregoing council. The successful reduction of the evils associated with that incessant private warfare which made Europe a battlefield overrun by armed bands without respect for anything, was not the work of a few days or a year. It was brought about by a slow and gradual process that was born in very humble beginnings on French soil, but expanded as time went on and as the forces of law and order multiplied. In canon 11, which is a renewal of the canons of Clermont and Reims, peace is assured at all times to priests, clerics, monks, travelers, merchants, and country people going to and returning from the market, churches, fields, and various other places.

CANON 13

Summary. Usurers are deprived of all ecclesiastical consolation and stigmatized with the mark of infamy.

Text. We condemn that detestable, disgraceful, and insatiable rapacity of usurers which has been outlawed by divine and human

[20] Identical with canons 8 of Clermont and 10 and 11 of Reims.

laws in the Old and New Testaments, and we deprive them of all ecclesiastical consolation, commanding that no archbishop, no bishop, no abbot of any order, nor anyone in clerical orders, shall, except with the utmost caution, dare receive usurers; but during their whole life let them be stigmatized with the mark of infamy, and unless they repent let them be deprived of Christian burial.[21]

CANON 14

Summary. Tournaments are condemned. Anyone losing his life in them shall be deprived of Christian burial.

Text. We condemn absolutely those detestable jousts or tournaments in which the knights usually come together by agreement and, to make a show of their strength and boldness, rashly engage in contests which are frequently the cause of death to men and of danger to souls. If anyone taking part in them should meet his death, though penance and the Viaticum shall not be denied him if he asks for them, he shall, however, be deprived of Christian burial.

Comment. The tournament had its origin in France in the middle of the eleventh century, whence it found its way to Germany and England. While innocent enough a sport in its beginnings, it soon developed into a means of settling private grudges and satisfying revenge. It always endangered the life of the combatants and not infrequently ended in the death of one or more. Owing to these abuses, the Church took steps to end the excesses committed. The first ordinance against them was issued by the Synod of Clermont (1130) in canon 9, of which the present canon is a repetition. Though severer measures were adopted against them, especially by the Fourth Lateran Council (1215) and by the Council of Lyons (1245), tournaments became more popular, and not till the middle of the sixteenth century did they disappear.

CANON 15

Summary. Anyone laying violent hands on a cleric or monk shall be anathematized. Likewise he who lays hands on one seeking refuge in a church or cemetery.

Text. If anyone at the instigation of the devil incurs the guilt of this sacrilege, namely, that he has laid violent hands on a cleric or monk, he shall be anathematized and no bishop shall dare absolve him, except *mortis urgente periculo,* till he be presented to the Apostolic See and receive its mandate. We command also that no

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[21] Denzinger, no. 365. Schneider, *Das kirchl. Zinsverbot u. d. kuriale Praxis im 13. Jahrh.*, in *Festgabe f. Hein. Finke*, Münster, 1904.

one shall dare lay hands on those who have taken refuge in a church or cemetery. Anyone doing this, let him be excommunicated.

Comment. This decree consists of two parts. The first is the celebrated privilege of personal inviolability accorded ecclesiastics and religious, and commonly known as the *privilegium canonis.* From early times violence against a cleric was punished by fines, severe canonical penances, and sometimes excommunication.[22] The Roman Synod of 862 or 863 declared in canon 14 *ipso facto* excommunication against anyone deliberately injuring a bishop. In the anarchy of the centuries that immediately followed, and especially during the anticlerical disturbances created by Arnold of Brescia in the twelfth century, ecclesiastics and religious, forbidden to carry weapons, were constantly exposed to physical harm and frequently suffered bodily injury from the violence of men and mobs. And so the Church was compelled to formulate more stringent measures for their protection. In canon 13 of the Synod of Reims (1131) Innocent II issued the celebrated decree *Si quis suadente diabolo*, by which he enacted that anyone maliciously laying hands on a cleric or monk incurred *ipso facto* anathema, absolution from which, except in danger of death, was reserved to the Holy See and must be sought by the offender in person. The present canon renews that of Reims and gives it a universal application. It is the first instance of a papal reservation and therefore holds an important place in the history of that discipline. In subsequent periods the application of this decree has been extended or restricted according to the needs of the times, but it has continued in force to our own day with this difference, that the absolution of the guilty party is reserved to the ordinary.[23] The terms *cleric* and *monk* in the canon must be understood in a wide sense and embraced all clerics in major and minor orders, tonsured persons, monks, nuns,[24] lay brothers,[25] novices[26] and tertiaries living the common life and wearing the habit. Women, however, lay brothers, etc., living the common life, who should maliciously strike or injure another member of the community or even clerics, could obtain absolution from their ordinary.[27] The penalty of the canon was incurred not only by the real perpetrators of the deed, but also by abetters and accomplices.

The second part of the canon deals with the right of asylum. It threatens with excommunication anyone who should inflict injury on those who

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[22] C.21–24, C.XVII, q.4.
[23] *Codex Juris Canonici*, c.2343, no. 4.
[24] C.33, X, De sent. excomm., V, 39.
[25] C.33 cit.
[26] C.21, VI°, De sent. excomm., V, 11.
[27] C.33 cit.

have taken refuge in a church or cemetery. Even in the Old Law and among the Greeks and Romans, temples and certain specified districts were places of refuge where the criminal fled for protection from revenge or death without due trial. The right of asylum is based on the natural feeling or consciousness that it is unjust to injure anyone who places himself under the protection of the Deity. When the Christian religion became the religion of the state, it was but natural that emperors should elevate churches and episcopal residences to the right of sanctuary. In one of his capitularies, Charlemagne decreed that no one who had taken refuge in a church should be removed therefrom by force, but should be left undisturbed till the court had declared its decision. Originally limited to the church and its immediately surrounding grounds, the right was subsequently extended to cemeteries, episcopal residences, parish houses, monasteries, seminaries, hospitals, and certain other places. Our canon excludes no one from the benefit of the privilege. By later enactments the *jus asyli* was more clearly defined and excluded from its benefits all notorious criminals, such as murderers, adulterers, ravishers of young girls, highway robbers, plunderers of fields, public debtors, and those who chose such places for the scene of their crimes in order to enjoy immunity. Since the sixteenth century it has been considerably modified, owing to the opposition of state legislation. Modern penal codes do not recognize it. However, the right still exists, though it is limited to the church only. The new Code of Canon Law in canon 1179, like the present canon, excludes no one, and extradition may not be made, except in cases of urgent necessity, without the permission of the bishop or that of the pastor of the church.

CANON 16

Summary. No one shall demand any ecclesiastical office on the plea of hereditary right. Such offices are conferred in consideration of merit.

Text. It is beyond doubt that ecclesiastical honors are bestowed not in consideration of blood relationship but of merit, and the Church of God does not look for any successor with hereditary rights, but demands for its guidance and for the administration of its offices upright, wise, and religious persons. Wherefore, in virtue of our Apostolic authority we forbid that anyone appropriate or presume to demand on the plea of hereditary right churches, prebends, deaneries, chaplaincies, or any ecclesiastical offices. If anyone, prompted by dishonesty or animated by ambition, dare attempt this, he shall be duly punished and his demands disregarded.

Comment. Owing to the license and venality of the times, episcopal sees were frequently usurped and given as fiefs to soldiers in recompense for services. Once in such hands, they were treated as property which descended by hereditary right from father to son. Likewise many of the clergy, bishops and priests, who had taken wives and begotten children, transmitted their benefices to their offspring.

CANON 17

Summary. Marriages between blood-relatives are prohibited.

Text. We absolutely forbid marriages between blood-relatives. The declarations of the holy fathers and of the holy Church of God condemn incest of this kind, which, encouraged by the enemy of the human race, has become so widespread. Even the civil laws brand with infamy and dispossess of all hereditary rights those born of such unions.[28]

CANON 18

Summary. Incendiarism is condemned and its perpetrators are to be deprived of Christian burial. They are not to be absolved till they have made reparation.

Text. By the authority of God and of the blessed Apostles Peter and Paul we absolutely condemn and prohibit that most wicked, devastating, horrible, and malicious work of incendiaries; for this pest, this hostile waste, surpasses all other depredations. No one is ignorant of how detrimental this is to the people of God and what injury it inflicts on souls and bodies. Every means must be employed, therefore, and no effort must be spared that for the welfare of the people such ruin and such destruction may be eradicated and extirpated. If anyone, therefore, after the promulgation of this prohibition, shall through malice, hatred, or revenge set fire, or cause it to be set, or knowingly by advice or other connivance have part in it, let him be excommunicated. Moreover, when incendiaries die, let them be deprived of Christian burial. Nor shall they be absolved until, as far as they are able, they have made reparation to those injured and have promised under oath to set no more fires. For penance they are to spend one year in the service of God either in Jerusalem or in Spain.

CANON 19

Text. If any archbishop or bishop relaxes this ordinance, he shall restore the loss incurred and shall be suspended from his episcopal office for one year.

[28] Cf. canon 5 of I Lateran.

CANON 20

***Text.* We do not deny to kings and princes the authority (*facultatem*) to dispense justice in consultation with the archbishops and bishops.**

Comment. The three foregoing decrees are clearly only one, as is evident from canon 13 of the Synod of Clermont, with which they are identical and which Innocent here renews.[29] Arson was one of the crying evils resulting from those petty strifes and private wars that raged among the princes of Europe. Hatred and revenge frequently found expression in the destruction of crops and dwellings by fire, at times also of churches, thus reducing helpless and innocent people to misery and dire want, which often proved detrimental not only to their bodies but to their souls as well. In the ancient canon law, in addition to the obligation of repairing the loss, the incendiary was punished with severe public penances. The destruction of profane buildings or crops by fire was subject to a penance covering a period of three years, and the similar destruction of a church called for a penance of fifteen years.

CANON 21

Summary. Sons of priests must be debarred from the ministry of the altar.

***Text.* We decree that the sons of priests must be debarred from the ministry of the altar, unless they become monks or canons regular.**

Comment. To put an end to clerical incontinence various kinds of disabilities were enacted and as far as possible enforced not only against the wives but also against the children of ecclesiastics. Wives and concubines were liable to be seized as slaves by the overlord, while the children were relegated to the category of servile rank, debarred from sacred orders, and declared incapable of exercising hereditary rights, because *saepe solet similis filius esse patri.* The Synod of Toledo (655) in canon 10 decreed that the sons of clerics in major orders are to be held forever as serfs of the church which their father served.[30] In 1031 the Synod of Bourges in canon 8 decreed that the sons of priests, deacons, and subdeacons, born after the reception of these orders, are excluded from the clerical state, because they and all others born of illegitimate unions are stigmatized by the Sacred Scriptures as *semen maledictum.* They are deprived of all

[29] Cf. c.32, C.XXIII, q.8.
[30] C.3, C.XV, q.8.

hereditary rights in accordance with the civil law, and their testimony is not to be accepted. Those who already are clerics are to remain in whatever order they are, but are not to be promoted to higher orders.[31] Urban II (1088–99) forbade the ordination of the illegitimate sons of clerics, unless they became members of approved religious orders.[32]

The present council, following earlier decisions, permits promotion to the ministry of the altar in case such candidates should choose the religious life of approved orders. The irregularity incurred *ex defectu natalium* is obliterated by religious profession. Moreover, the solitude and environment of the religious life, as well as the protection it offers, are a sufficient guarantee that they will not follow in the sin-stained footsteps of their fathers. From ecclesiastical benefices and from all ecclesiastical honors and dignities they are forever excluded. Religious profession opens the way to sacred orders, but it does not unseal the gateway to dignities or even to regular prelacies.

CANON 22

Summary. Bishops and priests are admonished to instruct the people against false penances.

Text. Since among other things there is one that chiefly disturbs the Church, namely, false penance, we admonish our confrères (that is, the bishops) and priests that the minds of the people be not deceived by false penances, lest thus they should run the risk of being drawn into hell. A penance is false when it is performed for one sin only and not also for the others, or when only one is avoided, and the others are not. Hence it is written: "Whoever shall observe the whole law but offend in one (point), is become guilty of all," [33] so far as eternal life is concerned. For as one guilty of all sins will not enter the gate of eternal life, so also if one be guilty of only one sin. A penance, moreover, is false when the penitent does not resign a curial or commercial occupation, the duties of which he cannot perform without committing sin, or if he bears hatred in his heart or does not repair an injury or does not pardon an offense, or if he carries arms in contravention of justice.[34]

Comment. This canon is practically a verbatim repetition of canon 16 of the Synod of Melfi (1089), presided over by Urban II, and is directed

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[31] Mansi, XIX, 504; Hefele-Leclercq, IV, 953 f.

[32] Synod of Melfi (1089), canon 14, Mansi, XX, 724; Hefele-Leclercq, V, 345. Cf. also lib. I, tit. 17 of the decretals of Gregory. and Catalani, *Sacr. concilia oecumenica*, III, 107–111.

[33] James 2:10.

[34] Denzinger, no. 366. Synod of Melfi, canon 16, Mansi, *l. c.*; Hefele-Leclercq, *l. c.*

against the abuse so prevalent, especially during the eleventh and twelfth centuries, of seeking sacramental absolution without fulfilling the required conditions. This misuse, as the canon indicates, had as its cause the ignorance, negligence, and laxity of bishops and priests, who are here admonished to guard the people against such sacrilege. In canon 5 of his Seventh Roman Synod (1080), Gregory VII solemnly warned the people to choose for their confessors prudent and pious men.[35]

CANON 23

Summary. Those who reject the sacraments are condemned, and the civil power is invoked to restrain their mischief.

Text. **Those who, simulating a species of religious zeal, reject the sacrament of the body and blood of the Lord, the baptism of infants, the priesthood, and other ecclesiastical orders, as well as matrimony, we condemn and cast out of the Church as heretics, and ordain that they be restrained by the civil power. For their partisans also we decree the same penalty.**[36]

Comment. This canon is a word for word repetition of canon 3 of the Synod of Toulouse (1119)[37] and was directed against the Petrobrusians, a heretical sect of the twelfth century, so named after their founder, the renegade priest Peter of Bruys, whom Peter the Venerable and Abelard characterized as one of the most dangerous of heretics. Their principal doctrinal tenets were five: (1) Baptism must be preceded by personal faith; hence its administration to children who have not yet attained the use of reason is worthless. (2) Christians need no holy place in which to pray. Their prayers, if worthy, are heard in a barn as well as in a church; hence churches must not be built, and those already built must be destroyed. This doctrine harmonizes with the teachings of the spiritualistic sects of the preceding century. (3) Crosses must be destroyed; because this instrument on which Christ suffered so much, must not be an object of veneration, but of detestation. (4) What is offered daily in the mass is pure nothing. Christ gave His flesh and blood to His disciples once and it cannot be given again. (5) Prayers and good works by the living cannot profit the dead, and God ridicules all ceremonies and chant. The reference in the canon to the rejection of matrimony does not seem to apply to the Petrobrusians. Probably the council had other sects in mind.

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[35] Mansi, XX, 533; Hefele-Leclercq, V, 263 f.
[36] Denzinger, no. 367.
[37] Mansi, XXI, 226; Hefele-Leclercq, V, 570.

CANON 24

Summary. Sacramentals shall be *gratis*.

Text. We decree further that no money shall be demanded for chrism, oil, and burial.

CANON 25

Summary. Ecclesiastical offices may not be received from the hands of laymen.

Text. If anyone has received a deanery, prebend, or other ecclesiastical benefices from the hands of laymen, he shall be deprived of the benefice thus unjustly obtained. For, according to the decrees of the holy fathers, laymen, no matter how devout they may be, have no authority to dispose of ecclesiastical property.[38]

CANON 26

Summary. Women who pretend to be nuns are forbidden to live in private houses and receive strangers and persons of little faith.

Text. We decree that that pernicious and detestable custom of some women who, though they live neither according to the Rule of blessed Benedict nor according to the rules of Basil and Augustine, yet wish to be commonly regarded as nuns, be abolished. For while, according to the rule, those living in monasteries must observe the common life in the church as well as in the refectory and dormitory, these build their own retreats (*receptacula*) and private houses in which, contrary to the sacred canons and good morals, they are not ashamed to receive at times under cover of hospitality strangers and persons of little religious faith. Wherefore, since all who do evil hate the light, moved by the same impulse, these, hidden in the tent of the just (that is, under the name of nuns), think they can conceal themselves also from the eyes of the Judge who sees all things, we absolutely and under penalty of anathema forbid that this disgraceful and detestable evil be practiced in the future.

Comment. The religious institutes of the time were not immune against the disorders and disturbances born of feudalism. During the tenth and two succeeding centuries the number of women's communities increased rapidly, with the unfortunate result that not all who entered were inspired by the proper religious motives. The present canon, it seems, was directed chiefly against those *canonicae seculares* who lived outside the convents,

[38] Cf. canon 4 of preceding council.

in their own private houses, and who, from the character of the guests they entertained, left themselves open to well-grounded suspicion regarding their morals. A few years later the Synod of Reims (1148), presided over by Eugene III, in canon 4 ordained that nuns and canonesses must at all times live in the convent, must rid themselves of their private possessions, and follow strictly the Rule of St. Benedict or that of St. Augustine. If they did not amend by the next feast of SS. Peter and Paul, all religious services in their churches would be prohibited, and in case of death such religious would be denied Christian burial.[39]

CANON 27

Summary. Nuns may not sing the office with the monks.

***Text.* We likewise forbid nuns to sing the divine office in the choir with the canons or monks.**

Comment. In the *Decretum* this canon is united with the preceding one. The reason for the prohibition it contains arose from abuses that had found their way into certain monasteries. It does not seem to have had the desired effect. In fact, about the year 1220, Jacques de Vitry wrote of churches in Germany and the Netherlands in which on solemn festivals the canonesses and the canons not only sang the divine office in the same choir, but also marched in procession together, the canonesses on one side and the canons on the other, that is, side by side.[40]

CANON 28

Summary. Men of piety are not to be excluded from the election of bishops, and only capable and trustworthy persons are to be chosen for the episcopal office.

***Text.* Since the decrees of the fathers insist that on the death of bishops the Churches be not left vacant more than three months, we forbid under penalty of anathema that the canons of cathedrals exclude from the election of bishops *viros religiosos* (that is, monks and canons regular), but rather with the aid of their counsel let a capable and trustworthy person be chosen for the episcopal office. If, however, an election has been held with such religious excluded and held without their assent and agreement, it shall be null and void.**

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[39] Mansi, XXI, 714; Hefele-Leclercq, V, 824 f.

[40] "Sunt autem in eisdem ecclesiis (canonicarum) pariter canonici seculares in diebus festis et solemnibus ex altera parte chori cum predictis domicellis canentes et earum modulationibus equipollentes respondere studentes. . . . Similiter et in processionibus composite et ornate, canonici ex una parte et domine ex alia parte concinentes procedunt." *Historia,* lib. II, c.31.

CANON 29

Summary. Slingers and archers directing their art against Christians, are anathematized.

Text. **We forbid under penalty of anathema that that deadly and God-detested art of slingers and archers be in the future exercised against Christians and Catholics.**

Comment. The reference seems to be to a sort of tournament, the principal feature of which was the shooting of arrows and other projectiles at persons on a wager. The practice had already been condemned by Urban II in canon 7 of the Lateran Synod of 1097, no doubt because of the danger it involved.[41]

CANON 30

Summary. Ordinations by the antipope are null.

Text. **The ordinations conferred by Peter Leonis (Pierleone, the antipope Anacletus II) and other schismatics and heretics, we declare null and void.**[42]

[41] Hefele-Leclercq, V, 455.
[42] Cf. I Nicaea, note 106.

THE ELEVENTH GENERAL COUNCIL (1179)

Third Lateran Council

History. The defeat of Frederick Barbarossa in the battle of Legnano (May 29, 1176) and the complete failure therein of the imperial pretensions, forced from the Emperor the recognition of Alexander III (1159–81) as the true pope, thus putting an end to the schism of three successive antipopes, which covered a period of seventeen years. In agreement with an article in the treaty of Venice (1177) between the Pope and the Emperor, the former (September, 1178) convoked the Third General Council of the Lateran for the Lent of the following year. Its purpose was to repair the evils caused by the schism, to condemn current errors, and to correct abuses among clergy and laity. It opened in March, 1179, and was presided over by the Pope. There were present about three hundred bishops, who together with many abbots and other dignitaries brought the entire membership to nearly a thousand. Among them were a number of Latin prelates of Oriental sees. The East was represented by Archbishops William of Tyre (the historian of the crusades), Heraclius of Caesarea, Bishop Albert of Bethlehem, and others. The Patriarch of Jerusalem was represented by Peter, the prior of the Holy Sepulcher. There were three sessions, on March 5, 14 and 19. After wiping out the remains of the schism, condemning the Albigensian and other heresies, and giving consideration to other matters, the council in the last session promulgated twenty-seven canons for the restoration of ecclesiastical discipline.[1]

CANON 1

Summary. Hereafter the pope is to be chosen by a two-thirds majority of the electors who are present. Anyone acting contrary to this decision shall be excommunicated and excluded from the clerical state.

Text. **Though laws sufficiently clear have been issued by our predecessors to avoid contention in the election of a supreme pontiff, but**

[1] Mansi, XXII, 209 ff.; Hefele-Leclercq, V, 1086–1112; Hergenröther, *Handbuch d. allg. Kirchengeschichte*, II, 5th ed., 468 ff.; Reuter, *Gesch. Papst Alexander III u. d. Kirche seiner Zeit*, Leipzig, 1864; Pissard, *La guerre sainte en pays chrétien*, Paris, 1912; *Dict. de théol. cath.*, VIII, 2644–52. For bibliography on Alexander III and outstanding events of his pontificate, cf. Hefele-Leclercq, V, 917 ff.

because of the boldness of detestable ambition, the Church has frequently suffered grave schism notwithstanding these laws, to avoid this evil we have, with the advice of our brethren and with the approval of the holy council, decided to add something. We decree, therefore, that if by chance any hostile person has sown cockle among the cardinals to influence the election and if a complete agreement cannot be reached, two-thirds agreeing while the other third is unwilling to agree or arrogates the right to choose another, he without any exception shall be acknowledged as pontiff of the universal Church who has received two-thirds of the votes. But if anyone who has received only one-third of the votes should usurp the name of bishop (that is, bishop of Rome), both he and those who acknowledge him shall be excommunicated, excluded from the clerical state, and denied communion except Viaticum *in ultimis;* and unless they repent they shall share the fate of Dathan and Abiron, whom the earth swallowed alive. Moreover, if anyone should have been elected to the office of supreme pontiff by less than two-thirds of the votes, unless a greater harmony is effected, he shall by no means accept it; if he refuses to abstain from its acceptance, he shall be subject to the aforesaid penalties. This, however, is not prejudicial to the canonical laws and to the other Churches, in which the decision of the greater and more prudent part must be accepted, because whatever doubt may arise in such cases can be settled by the judgment of the superior. But in the Roman Church there is constituted something special, because recourse cannot be had to a superior.

Comment. There can hardly be any doubt that the preceding council restricted the election of the pope to the cardinals. In the present canon Alexander III, to avoid further schism, enacted that he is to be chosen by a two-thirds majority of the electors who are present. What was to be done in case such a majority could not be obtained, the canon does not state. Such a contingency actually arose on the death of Clement IV in 1268, with the result that the Holy See was vacant for a period of two years and nine months. To prevent the recurrence of such a delay, Gregory X in the Second Council of Lyons (1274) promulgated the law of the conclave.

In case anyone who had received less than two-thirds of the votes should usurp the office of supreme pontiff, both he and his partisans were to be excommunicated and degraded. Even if they repented, communion was to be denied them except in *extremis.* The crime of Dathan and Abiron was schism and rebellion against Moses, pretensions to the priesthood without being lawfully called (Num., chap. 16).

CANON 2

Summary. The ordinations conferred by the antipopes are null and void. Likewise the ordinations performed by those consecrated by them.

Text. Following the example of our predecessor Innocent (II), of happy memory, we declare null and void the ordinations conferred by the heresiarchs Octavian and Guido of Crema, as well as those by John of Struma who succeeded them. Likewise the ordinations performed by those consecrated by them. Those who have received ecclesiastical dignities or benefices from the hands of the aforesaid schismatics shall be deprived of the same. The alienation also of ecclesiastical properties by the same schismatics or by the laity, has no force and must be returned to the Church without any charge. If anyone presumes to act contrary to this, let him be excommunicated. Those who have freely sworn to adhere to the schism, we declare suspended from sacred orders and dignities.

Comment. The heresiarchs Octavian, Guido of Crema, and John of Struma were successively antipopes during the pontificate of Alexander III. When John of Struma made his submission to the Pope in 1178, some of his obstinate supporters, to continue the schism, chose a successor, Lando Sitino, who took the name of Innocent III. Lacking sufficient support, he soon abandoned the struggle, yet there were those who had freely sworn to adhere to the schism.

CANON 3

Summary. A bishop should show in his own life how others are to conduct themselves. No one is to be promoted to the episcopate who has not attained the age of thirty years, is of legitimate birth and upright character. Bishops-elect who are not consecrated within the time specified by the canons, shall be deprived of their benefices. Candidates for inferior offices must be twenty-five years of age and, unless they receive sacred orders within a reasonable time, others shall replace them, notwithstanding appeals.

Text. Since in sacred orders and ecclesiastical ministries maturity of age, integrity of morals, and a knowledge of letters are required, much more ought these to be looked for in a bishop, who, having the care of others, should show in his own life how others are to conduct themselves in the house of God. Wherefore, lest what has been done by some from force of circumstances should be transmitted as the accepted rule, we declare in the present decree that no one is to be promoted to the episcopate unless he has attained the age of thirty, is of legitimate birth, is known to be of upright character, and possesses the necessary knowledge. But, when he has been elected and has received the confirmation of his election and has

taken over the administration of ecclesiastical properties, and the time specified by the canons within which bishops must receive consecration has expired, he whose duty it is shall have unrestricted authority to dispose of those benefices which he possessed. Inferior ministries also, as deaneries, archdeaconries, and others that involve the *cura animarum* and the government of parochial churches, shall not be conferred upon anyone unless he has attained the age of twenty-five and is able to meet the requirements in the matter of knowledge and morals. But when such an appointment has been made, and the archdeacon is not raised to the diaconate, and the dean and the others to the priesthood within the time fixed by the canons, they shall be removed from office and others who are willing and capable to discharge it satisfactorily are to be appointed. Nor shall recourse to an appeal avail them any, if by chance through an appeal they should wish to defend themselves in transgressing that law. This, we decree, is to be observed not only in regard to those who are being promoted but also in the case of those who have already been promoted, if it is not contrary to the canons. Clerics who should elect anyone contrary to this decree, shall be deprived of their right to vote and shall also be suspended from their ecclesiastical benefices for a period of three years. For it is but just that he whom the fear of God does not restrain from evil, should be coerced by the severity of ecclesiastical discipline. Has a bishop acted contrary to this or consented to such action, he shall lose his right of conferring the aforesaid benefices, and their bestowal shall devolve upon the chapter or the metropolitan in case the chapter cannot reach an agreement.

Comment. This decree among other things specifies the qualifications necessary in a candidate to an office that involves the *cura animarum*, especially the episcopate. During the eleventh and twelfth centuries these conditions or requirements had been all too frequently utterly disregarded. While the questions of age and illegitimacy can be covered by papal dispensation, moral integrity and insufficient knowledge are qualifications that are beyond that dispensing power, for they are prescribed by the divine and natural law. Bishops and inferior ministers, whose election has been confirmed must, within the time prescribed by the canons, receive the sacred orders required by the office to which they have been elected, or be replaced by others.[2] Clerics who should elect someone not possessing the qualifications mentioned, incur a twofold penalty: (1) they are deprived of their right to vote for a period of three years, and (2) for the same number of years they are *ipso facto* suspended from their ecclesiastical benefices. This suspension, however, does not affect all the benefices

[2] Cf. Chalcedon canon 25 and canon 8 of this series.

that they possess, but is restricted to the revenues of that church only whose vacancy they endeavored to fill by voting for an unworthy candidate.[3] In the case of one voting for an unworthy candidate to fill a vacancy in a church from which he derives no revenue, the suspension does not apply, in which case such a one is penalized by the proper authority in another way.[4] The last sentence of the canon refers to the right of devolution. In case the bishop has acted contrary to the provisions of the decree, the bestowal of the benefices shall devolve on the chapter or metropolitan.[5]

CANON 4

Summary. The council determines the number of horses prelates may take with them on their visitations. Bishops are forbidden to burden their subjects with onerous exactions. Archdeacons and deans may not impose taxes on clerics.

Text. Since the Apostle decided to support himself and those accompanying him with his own hands that he might nullify the preaching of the false apostles, and at the same time not be a burden to those to whom he preached, it is a very serious matter and ought to be corrected, namely, that some of our brethren and bishops (in their visitations) make such exorbitant demands on their subjects that these are at times compelled to offer church ornaments for sale in order to meet these demands, and the food that would otherwise last a long time is consumed in one brief hour. Wherefore we decree that archbishops making their parochial visitations shall have in their trains not more than forty or fifty horses, according to the different conditions of the provinces and the resources of the churches; cardinals not more than twenty-five; bishops not more than twenty or thirty; archdeacons five or seven at most, and deans are to be content with two. Neither shall they take with them hunting dogs and birds, but on their journey let them seek not their own, but the things of Jesus Christ. Nor shall they ask for sumptuous meals, but with gratitude let them receive what has candidly and in proportion

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[3] C.37, VI°, de elect., I, 6.

[4] Kober, *Die Suspension*, 252 f.

[5] The right of devolution goes back to early times. Traces of it seem to exist in canon 6 of the Synod of Sardica (*c.* 343). Gregory the Great (c.2, D.LXXXIX) ordained that each bishop should appoint a steward for his Church, and should he neglect to do so, he is to be chosen by the clergy. The Seventh General Council in canon 11 declared that if a metropolitan fails to appoint a steward for his Church, then the appointment devolves upon the bishop of Constantinople. The duty devolves upon the metropolitans if bishops subject to them neglect to appoint stewards for their Churches (c.3, C.IX, q.3). For elective prelacies the law or right of devolution does not antedate the Fourth Lateran Council (canon 23). Thomassin, *Vetus et nova ecclesiae disciplina,* II, lib. 1, cap. 51; Ebers, *Das Devolutionsrecht,* Stuttgart, 1906.

to circumstances been placed before them. We forbid also that bishops burden their subjects with taxes and onerous exactions. But in cases of necessity which sometimes arise, and in cases justified by a reasonable cause, they may make a moderate and charitable appeal to them for aid. For since the Apostle says: "Children ought not to lay up for the parents, but the parents for the children" (II Cor. 12: 14), much more unbecoming is it to paternal solicitude if bishops oppress their subjects instead of extending to them in their necessities the helping hand of a pastor. Archdeacons and deans shall impose no exactions or taxes on priests or clerics. What has been said above with reference to the number of horses tolerated, is to be observed in those places where the revenues and resources of the church are more abundant. But in the poorer places we enjoin the observance of the rule, that by the coming of many the few be not oppressed, lest by such favor (that is, the number of horses permitted in the earlier part of the canon) those who have heretofore been accustomed to use only a few horses, should thereby believe a greater liberty granted to them.

Comment. Many are the complaints of synods against bishops and others who in the course of their parochial visitations oppressed the people by exorbitant exactions. It is question here of the *procuratio canonica*, that is, the sustenance which is necessary for a bishop in the course of his canonical visitation and which the visited churches had to furnish. We find it already mentioned in the synods of the sixth century. When several churches were visited in one day, the *procuratio* was evenly divided among the churches visited. In case the bishop visited the same church twice or several times during the year, that church was required to supply the *procuratio* only once. It was provided in kind till the end of the thirteenth century, when this was replaced by a monetary equivalent if that was agreeable to the church visited.[6] To put an end to abuses, Benedict XII (1338) fixed for different countries a definite tax to be paid on such occasions.[7] It may be noted in passing that episcopal journeys in those days were marked with considerable pomp and magnificence. Usually a large retinue of ecclesiastics and servants accompanied the bishop. To provide for these and their horses even for a single day required from the parish a display of not a little generosity. There were bishops who, not content with the *procuratio* or its monetary equivalent, oppressed their subjects with an exorbitant demand for money; while others did not hesitate to exact both procurations and money.

[6] Cc. 2, 3, VI°, De cens., III, 20.
[7] C.un., Extrav. comm., De cens., III, 10.

CANON 5

Summary. No one is to be ordained without a title unless he has means of his own.

Text. Should a bishop ordain anyone to the diaconate or priesthood without a title from which he may derive the means of suitable subsistence, he shall provide such a one with means of proper support until he can assure him an ecclesiastical revenue, unless the cleric so ordained is secured against need by his own fortune or patrimony.[8]

CANON 6

Summary. No one is to be suspended or excommunicated without a previous canonical warning. No subject shall appeal before his case has been heard, especially if he be a religious. An appellant who does not appear when his case is called, shall make compensation to the judge.

Text. A very reprehensible custom has grown up in some sections, namely, that our brethren and co-bishops, and also archdeacons, without any previous warning, impose the sentence of suspension or excommunication on those who they think are about to appeal their cases. Others also, fearing the sentence of the superior and canonical discipline, without any cause enter an appeal and for the defense of their iniquity have recourse to a means that is designed for the protection of the innocent. Wherefore, that prelates may not oppress their subjects without cause, and that subjects may not at will under the pretext of appeal evade the correction of prelates, we declare in the present decree that prelates shall not without a previous canonical warning impose on their subjects the sentence of suspension or excommunication, unless the offense be such that by its nature it calls for the penalty of excommunication without such warning; nor on the other hand shall subjects have recourse to appeal against ecclesiastical discipline before their case has been heard. But if anyone should consider it necessary to appeal, let a suitable time be determined for him to prosecute it, and, if within the time specified he fails to do so, then the bishop may freely use his authority. But if in any matter whatsoever an appeal has been made, and he to whom it has been directed (that is, the appellate judge) has come, whereas he who made it fails to appear, the latter, if he has any means, shall make suitable compensation to the former; that being thus deterred, an appeal may not be easily made by one to the detriment of the other party. And we wish this to be observed particularly in monasteries, that monks, or any religious for that matter, when they have to be corrected for some misdemeanor, may not presume to appeal against the regular discipline of the prelate and

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[8] Cf. canon 6 of Chalcedon.

chapter, but let them receive humbly and devoutly what has been enjoined for their spiritual welfare.

CANON 7

Summary. It is simoniacal to exact fees for the installation of bishops, abbots, etc.; also for burials, obsequies, or nuptial blessings, and for the administration of the other sacraments.

Text. Since in the Church all things ought to be done *ex caritate*, and what has been *gratis* received ought to be so dispensed, it is deplorable that in some Churches venality should exist to such an extent that something is expected for the installation of bishops, abbots, and other ecclesiastical persons in their sees or for the introduction of priests into their churches, as well as for burials, obsequies, and nuptial blessings or for the administration of other sacraments; so that he who is in need cannot receive these things unless he is prepared to meet the demands imposed. Many think themselves permitted to do this under the false impression that the law has been abrogated by long custom; being blinded by greed, they do not consider that crimes become graver the longer they are continued. Wherefore, that this may not happen in the future, we strictly forbid that something be demanded for the installation of ecclesiastical persons in their sees or of priests in their churches, or for burials and nuptial blessings, or the administration of the other sacraments. If anyone presume to act contrary to this, let him know that he shall share the fate of Giezi (IV Kings 5: 20–27), whose greed he imitated by his exactions.

We forbid, moreover, that bishops, abbots, and other prelates impose new taxes on the churches or increase old ones; nor shall they presume to appropriate to their own use a portion of the revenues; but the exemptions which they seek to retain for themselves, let them also be willing to retain for their subjects. Should anyone act otherwise, his action shall be considered null and void.

CANON 8

Summary. Ministries, benefices, and churches must not be conferred upon or promised to anyone before they are vacant. Even the pagans forbid this. But when an ecclesiastical office has become vacant, let it be filled within six months. If the bishop neglects to do so, then let it be done by the chapter.

Text. No ecclesiastical ministries, benefices, or churches shall be bestowed upon or promised to anyone before they are vacant, lest such a one should desire the death of his neighbor in whose place and benefice he believes himself to be the successor. Since this is forbidden even by the laws of the pagans, it is too base and harbors

the punishment of the divine judgment, if the hope of future succession, which even pagans are careful to condemn, should find a place in the Church of God. But when it happens that ecclesiastical prebends or any offices become vacant in some church, or even if they be now vacant, let them not long remain so, but within six months let them be conferred on persons who are worthy and capable of administering them. If the bishop, where this is his duty, delays to do so, let it be done by the chapter. If this duty belongs to the chapter and is not performed within the time prescribed, then the bishop with the advice of pious men shall make the appointments. But if all these are negligent in this matter, the metropolitan shall appoint to these offices without interference from them and in accordance with the interests of God.

CANON 9

Summary. Religious, also those exempt, may not receive churches and tithes from laics without the approval of the bishops. Likewise, without the approval of the bishops, they may not appoint priests to or remove them from churches that do not belong to them *pleno jure*. Templars and Hospitallers may celebrate once a year in a church located in interdicted territory; they may not, however, conduct burial services.

Text. Since it is our duty not only to instil religion but also to foster its growth in every way, we cannot do better than by the authority committed to us to cherish those things that are right and correct those that impede the progress of truth. From the bitter complaints of our brethren and co-bishops it has come to our knowledge that the Templars and Hospitallers (of St. John of Jerusalem) and also other religious, exceeding the privileges granted them by the Apostolic See, too frequently invade the episcopal authority, and such action is not only a source of scandal to the people of God but also creates grave danger to souls. We are told that they receive churches from laics, admit to the sacraments and to Christian burial those excommunicated and under interdict, appoint and remove priests in their churches without their (the bishops') knowledge and approval, and when their brethren go out seeking alms, since it has been granted to them that on their arrival the churches may once a year be opened to them and that they may celebrate the divine offices therein, many of them from one house or different houses often enter an interdicted locality, abuse their privileges by celebrating the divine offices, and then presume to bury the dead in the aforesaid (interdicted) churches. By reason also of the fraternal societies which they establish in many places, they weaken the episcopal authority, when against their decisions and under the pretext of certain privileges they aim to protect all who wish to become members of their fraternity. These things are not done so much with the knowledge and counsel of the majority as from the indiscretions

of a few, and we decree that all excesses and all conduct, the lawfulness of which may be questioned, be removed. We forbid them and all other religious to receive churches and tithes from the hands of laymen without the approval of the bishops, and those are to be given up which recently they have received contrary to this instruction; and we ordain that those who are excommunicated and those also nominally (*nominatim*) under interdict be avoided by them and by all others, according to the decision of the bishops. For those churches that do not belong to them *pleno jure*, let them present to the bishops priests to be appointed, who shall be responsible to them (to the bishops) concerning the care of the people, but to the priests let them exhibit a satisfactory account of the temporalities; those priests appointed, however, let them not presume to remove without the approval of the bishops. If the Templars or Hospitallers should enter an interdicted locality, they may celebrate the ecclesiastical office only once a year, but they may not bury then the bodies of the dead. Concerning the fraternal societies, we decree that if the members do not give themselves absolutely to the aforesaid brethren (the Templars, etc.), but continue to retain their private possessions, they are for that reason by no means exempt from the decisions of the bishops, but are subject to their authority as are other subjects, since they need to be corrected for their excesses. What has been said of the aforesaid brethren (Templars, etc.), is to be observed also by other religious who intrude upon the rights of bishops, and against their canonical decisions presume to produce the tenor of our privileges. If they act contrary to this decree, the churches in which they dare do this shall be placed under interdict and what they have done shall be considered null and void.

CANON 10

Summary. Money may not be demanded from monks on their entrance into the monastery. They may not have private property and must live the common life. If *in extremis* money is found in the possession of a monk, he shall not be buried among the brethren. Priories shall not be conferred for a price.

Text. No money is to be demanded from monks on their entrance into the monastery. They may not have private property or live separately in towns and villages or be assigned singly to any parochial churches; but let them remain in the major monastery or live with some of their brethren. Nor shall they mingle singly with seculars, thus inviting conflict with spiritual enemies, for Solomon says: "Woe to him that is alone, for when he falleth he hath none to lift him up" (Eccles. 4: 10). But if anyone, thus requested, should give something for his reception, he shall not be promoted to sacred orders. He, however, who should take something from such a one,

shall be deprived of his office. Has a monk money beyond the amount permitted him by the abbot for the administration of the office of which he has charge, he shall be removed from the communion of the altar; and if *in extremis* money be found in his possession, let no offering be made for him nor let him be buried among the brethren. All this, we command, is to be observed also by other religious. An abbot also who does not carefully observe these instructions, shall expose himself to deprivation of office. Priories also (that is minor monasteries) shall not be conferred upon anyone for a price, otherwise both the giver and the receiver shall be removed from the ecclesiastical ministry. Priors of conventual churches, when they have been canonically elected by their chapters, are not to be removed except for a just and manifest reason, as, if they have been guilty of squandering or of living incontinently or of anything that may justly demand their removal; or if with the counsel of the brethren they are promoted to a higher office.[9]

CANON 11

Summary. Clerics living incontinently shall be deposed from office and deprived of their ecclesiastical benefice; laics shall be excommunicated.

Text. Clerics in sacred orders who keep in their houses any women for unchaste purposes, must either dismiss them and live continently or be deposed from office and deprived of their ecclesiastical benefice. Anyone found guilty of that incontinence, which is against nature, on account of which came the anger of God upon the children of unbelief and destroyed by fire five cities, if he be a cleric, let him be deposed from the clerical state or sentenced to a monastery to do penance; if a layman, let him be excommunicated and completely cut off from the communion of the faithful. Moreover, if any cleric shall presume to frequent the monasteries of nuns without necessity, let him be warned by the bishop, and if he does not amend, let him be removed from his ecclesiastical benefice.[10]

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[9] The synods distinguish two classes of priors, conventual and non-conventual. The former are elective and perpetual, and it is of these that the council here speaks. They could be removed from office only by canonical deposition or by promotion. The latter, being in no sense conventual, could be appointed or removed at the will of the superior. Conventual priors again are of two classes: those who are independent, that is, subject to no abbot, and those so subject. It is of the former that the Fourth Lateran Council speaks in canon 12. Thomassin, *op. cit.*, I, lib. 3, cap. 69, 12.

[10] Other synods dealing with the same subject as the first part of this canon: Gregory VII, Rome, 1074, canons 11–21 (Mansi, XX, 413–28); 1078, canon 11 (*id.*, XX, 510); Urban II, Melfi, 1089, canons 2, 12 (*id.*, XX, 723); Clermont, 1095, canon 1 (*id.*, XX, 906); Callistus II, Reims, 1119, canon 5 (*id.*, XXI, 236); I Lateran, canon 3; II Lateran, canons 6, 7, 8; John XX, Palencia, 1322, canon 7 (*id.*, XXV, 700).

CANON 12

Summary. Clerics in sacred orders may not act as advocates in secular courts, unless the matter concerns their own cause or the cause of their church or that of the poor. A cleric who acts as general procurator of towns or becomes the justiciary of secular princes, is to be deposed; if he is a religious, let him be punished more severely.

Text. Clerics in subdeaconship and upwards and also those in minor orders, if they are supported from the revenues of the church, shall not act as advocates in legal matters in the presence of a secular judge, unless such matters concern their own cause or the cause of their church or that of unfortunate people who are unable to handle it themselves. Neither shall any cleric presume to accept the office of general procurator of a town or assume secular authority under princes or other seculars that he may become their justiciary.[11] If anyone acts contrary to this, which is the teaching of the Apostle: "No man, being a soldier to God, entangleth himself with worldly business" (II Tim. 2: 4), let him be deposed from the ecclesiastical ministry, since, having neglected the clerical office, he devoted himself to secular affairs that he might please the powers of the world. But should a religious act contrary to any of the foregoing instructions, we decree that even a severer punishment be meted out to him.

CANON 13

Summary. Several churches are not to be conferred on one person, and a church is to be conferred on him who is willing to devote himself to the work connected with it, otherwise he shall be deprived of it.

Text. Since there are some who do not curb avarice and contrary to the sacred canons seek to acquire different ecclesiastical dignities and many parochial churches, so that, though they are scarcely able to take proper care of one, they may arrogate to themselves the revenues of many, we strictly forbid that this be done in the future. Since a church or its ministrations have to be entrusted to some one, let such a person be chosen who will reside in one place (devote himself to one church) and who will himself exercise proper care in its regard. Otherwise he who has received shall lose what he has received contrary to the sacred canons, and he who has conferred several benefices on one, shall be deprived of the power of conferring them.

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[11] Justiciary, judge. During the eleventh and twelfth centuries these were selected not only from the secular nobility but also from the clergy, though the latter had been forbidden by numerous canons to assume secular offices. Notwithstanding this decree of the council, the evil continued to flourish in England where many bishops and abbots held the office of judge.

CANON 14

Summary. Plurality of churches is prohibited. Lay patrons who appoint and remove clerics at will are to be excommunicated, and clerics who receive churches from laymen shall be deprived of communion. Laymen holding tithes and transfering them to other laymen, shall be deprived of Christian burial.

Text. Since the ambition of some has already progressed to such an extent that they may be said to have not two or three but six or more churches when they cannot give the required attention to two, we command that this be corrected by our brethren and co-bishops, and from the plurality of benefices (a condition contrary to the canons), which leads to dissolution and wandering and contains an element of danger to souls, we wish that the poverty of those clerics who are capable of serving the churches worthily be relieved by the bestowal on them of some of these benefices.

Moreover, since the audacity of some laymen has gone so far that, despising the episcopal authority, they appoint and remove clerics in churches at will, also distribute possessions and other ecclesiastical goods at their own will, and oppress not only churches but also the people with taxes and other exactions, we decree that those who are hereafter guilty of such things be anathematized. A priest or cleric who shall receive a church from the hands of laymen without the authority of his bishop, shall be deprived of communion (minor excommunication), and if he does not amend, let him be deposed from the ecclesiastical ministry and excluded from the clerical state. Since some laymen compel ecclesiastical persons and even bishops to submit to their judgment, we decree that those who do this in the future, be excommunicated.

We forbid also that laymen holding tithes at the risk of their souls, transfer them in any manner to other laymen. If anyone has received such tithes and has not handed them over to the church, he shall be deprived of Christian burial.

CANON 15

Summary. Clerics cannot by their will transfer to others any properties acquired by the church. He who gives money that he may exercise episcopal or spiritual jurisdiction, shall be deprived of his office.

Text. In the duties of charity we are under obligation first of all to those from whom we are conscious of having received a favor. Some clerics, however, when they have received a great deal of property from their churches, presume to transfer property thus acquired to other uses. As this is prohibited by the ancient canons, we also prohibit it. With a desire, therefore, to protect the churches against loss, we command that such goods remain in the possession of the

churches, whether their incumbents died intestate or expressed a wish that these goods be transferred to others.

Moreover, since in certain sections deans are appointed for a consideration and exercise episcopal jurisdiction for a certain sum of money, we declare in the present decree that he who shall presume to do this in the future, shall be deprived of his office, and the bishop shall lose the right of conferring that office.

CANON 16

Summary. The decisions of the majority and the more discreet part of the chapter must always prevail, unless the minority can show reasonable cause.

Text. Since in all churches what has been enacted by the greater number and more prudent part of the brethren ought to be observed without delay, it must be considered as very serious and reprehensible when sometimes in certain churches a few members, prompted not by reason but by their own wilfulness, obstruct the decisions arrived at and will not permit ecclesiastical order to take its course. Wherefore, we ordain in the present decree that unless some reasonable cause be shown by the minority, the enactments determined upon by the majority and the more discreet part of the chapter must always prevail and be carried into effect without the intervention of an appeal. Neither can it hinder our decision if anyone perchance declares that he is bound by oath to preserve intact the customs of his church. For contracts that run counter to the interests of the Church and the decisions of the fathers are not to be regarded as oaths, but rather as perjuries. If anyone shall presume to swear to preserve intact customs that are contrary to right reason and in conflict with the sacred canons, let him be excluded from the reception of the body of our Lord until he has done adequate penance.[12]

Comment. The reforms inaugurated by former popes were now bearing fruit. The majority of the members of many cathedral chapters were eager for the correction of abuses and the return to a stricter observance of disciplinary decrees. That in every chapter a minority was opposed to any reform effort interfering in any way with their crooked interests, goes

[12] It is to be noted that in all editions of this council the text of the last sentence of this decree is corrupt. Mansi, XXII, 227, and Catalani, *Sacr. concilia*, III, 202, give the variants in the margin but fail to recognize in them the only meaning consistent with the rest of the text. Even the recent French translation of Hefele retains the faulty text and makes no reference to its correction. Friedberg in his edition of the *Corpus Juris Canonici* has corrected this defect by restoring the true reading, which is as follows: *Si quis autem hujusmodi consuetudines, quae nec ratione juvantur nec sacris congruunt institutis, jurare praesumpserit, donec dignam egerit poenitentiam a perceptione sit dominici corporis alienus.*

without saying. Their objection that they were bound by oath to preserve intact the customs of the cathedral church to which they were attached, and that the freedom hitherto enjoyed by them formed part of those customs, was met by the council's declaration that an oath to perpetuate abuses and customs which militate against right reason and the canons of the Church, is no oath at all or at most a false oath, perjury. The term *perjurium* in this decree must be understood in a wide and comprehensive sense, as meaning a wrongful oath, for to bind oneself by oath to maintain a custom that is in conflict with right reason, or to perform an action that is contrary to law (as murder), is not perjury in the strict and technical sense of the term, but rather a false or wrongful oath, *ipso facto* null and void.

CANON 17

Summary. If the founders and patrons of churches, or their heirs, cannot agree in the choice of a rector, he is to be regarded as such who is best qualified and has received the greater number of votes. If this cannot be done without scandal, then let the bishop appoint.

Text. Since in some localities the founders of churches or their heirs abuse the right which the Church has thus far granted them, by choosing not one rector for each church as the law requires, but several, and this without any regard for subordination (that is, each rector having the same measure of authority), we ordain in the present decree that if perchance the votes of the founders ~~(or their heirs)~~ are in favor of several candidates, he shall be regarded as rector of the church who is best qualified and has received the greater number of votes. If, however, this cannot be done without scandal, let the bishop appoint a rector in accordance with the best interests of God. The same appointment shall devolve upon him if among some there should arise the question concerning the right of patronage, when it has not been settled within a period of three months by him with whom such a decision rests.

Comment. The founders and patrons of churches and their heirs, who enjoyed the *jus praesentandi* in case of a vacancy in the rectorships of their churches, were frequently divided among and against themselves, with the detrimental result that there were in a single church as many rectors, all enjoying an equal measure of authority, as there were factions among the founders or their heirs. The evil had been condemned as early as 813 in canon 26 of the Synod of Châlons-sur-Saône, from which we learn that lay patrons and their heirs were often so divided against themselves that a single church was divided into four parts, each having its own rec-

tor.[13] This condemnation was renewed in 895 by the Synod of Tribur in canon 32.[14]

CANON 18

Summary. In every cathedral church a benefice ought to be assigned to a master who shall teach *gratis* the clerics of the church and also poor students. No fee shall be asked for license to teach, and no one qualified shall be denied the position.

Text. The Church of God as a devoted mother is bound to provide for those in need, not only in the things that pertain to the body but also in those that pertain to the good of souls. Wherefore, that the opportunity of acquiring an education may not be denied to the poor who cannot be aided by their parents' means, let some suitable benefice be assigned in every cathedral church to a master who shall teach *gratis* the clerics of that church and the poor students, by means of which benefice the material wants of the master may be relieved, and to the students a way opened to knowledge. In other churches also and in monasteries, let it be restored if in times past something of this sort has therein existed. For permission to teach, no one shall exact a fee or under pretext of custom ask something from those who teach; nor shall anyone who is qualified and seeks a license be denied the position to teach. Whoever acts contrary to this shall be deprived of his ecclesiastical benefice. For it is proper that he have not the fruit of his labor in the Church of God, who through cupidity endeavors to impede the progress of the churches by the sale of permission to teach.

Comment. This decree is not to be understood in the sense of an innovation, as if till then cathedral schools had been unknown or unheard of. Indeed, at the time of our council these schools had already attained the name and character of an old institution. They had their origin in the episcopal schools, which existed from very early times for the training of clerics. St. Chrodegang bishop of Metz (742–66) is usually regarded as the founder of medieval cathedral schools, in the sense that he introduced the common life among the clergy of his cathedral church and charged them with the conduct and management of the school attached to this church. In cities and towns where there was no cathedral, the canons in charge of the local churches were organized along the line of the cathedral clergy and conducted a "canonicate" school. Each of these was divided into two departments, the *schola minor*, in which reading, writing, etc., were taught, and the *schola major*, which embraced either the *trivium* only or the full cur-

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[13] Mansi, XIV, 98.
[14] *Id.*, XVIII, 148.

riculum of the seven liberal arts. In monasteries also schools had been established at an early date. In not a few of these churches and monasteries the schools formerly conducted had been discontinued. The present council, therefore, legislated for their restoration, at the same time aiming to abolish abuses, such as exacting a fee for permission to teach and denying to a person qualified and in good standing the right to teach.[15]

CANON 19

Summary. Laymen who impose taxes on clerics and churches or restrict clerical jurisdiction are, together with their partisans, if warning proves of no avail, excommunicated.

Text. For the sin of those who do, no less than for the detriment of those who endure, it must be considered a very serious matter that in different parts of the world rulers and magistrates of cities, as well as others who have authority, frequently impose so many burdens on the churches and so oppress them with heavy and repeated exactions, that the condition of the clergy in those districts is worse than it was under Pharao who had no knowledge of the divine law. He, indeed, having reduced all others to servitude, left the priests and their possessions in their former liberty and supplied them with food from the public stores (Gen., chap. 47). But these impose upon the churches nearly all their burdens and afflict them with so many compelled services (*angariis*) that to them may be applied the words of Jeremias: "The prince of provinces is made tributary" (Lam. 1:1). Whether it be trenches to be built or expeditions to be made or whatever else they think ought to be done, they are obsessed with the idea that the defraying of the expenses for all these things ought to be met from the goods intended for the use of the churches, the clerics, and Christ's poor. They also so restrict the jurisdiction and authority of the bishops and other prelates that no power over their subjects seems to remain to them. Under these circumstances the churches are to be pitied, and equally so they who seem to have absolutely discarded the fear of God and reverence for ecclesiastical orders. Wherefore, we forbid under penalty of anathema that they do such things in the future, except with the consent of the bishop and clergy and then only in extraordinary cases, namely, when the resources of the lay people do not suffice to meet the common necessities, then the aid of the churches may be enlisted. If magistrates and others should presume to do this in the future and take no heed of any warning, they and their partisans shall be subject to excommunication; nor shall they be restored to

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[15] Cf. IV Lateran Council, canon 11. Post, *Alexander III, the "Licentia Docendi," and the Rise of the Universities*, in *Haskins Anniversary Essays in Mediaeval History* (New York, 1929), pp. 255–77.

the communion of the faithful till they have made suitable satisfaction.

CANON 20

Summary. Tournaments are forbidden. Should anyone meet his death therein, he shall be denied Christian burial.

Text. Following the example of our predecessors Innocent and Eugene, of happy memory, we forbid those detestable jousts or fairs, commonly known as tournaments, in which soldiers usually come together by agreement and, to make a show of their strength and boldness, rashly engage in contests, which are frequently the cause of death to men and of danger to souls. If anyone taking part in them should meet his death, though forgiveness ~~(through the sacrament of penance)~~ shall not be denied him, he shall, however, ~~be deprived~~ of Christian burial.[16]

CANON 21

Summary. The periods during which the truce of God is to be observed and the penalties for its violation.

Text. We command that the truce of God be inviolately observed by all from the setting of the sun on Wednesday to its rising on Monday, and from Advent to the octave of Epiphany and from Septuagesima to the octave of Easter. If anyone shall dare violate it and does not make satisfaction after the third admonition, his bishop shall direct the sentence of excommunication against him and in writing shall announce his action to the neighboring bishops, none of whom shall restore to communion the one excommunicated; indeed, let each one confirm the sentence made known to him in writing. If anyone (that is, any bishop) shall dare violate this injunction, he shall jeopardize his orders. And since "a threefold cord is not easily broken" (Eccles. 4: 12), we command that bishops, having in mind only God and the salvation of the people, and discarding all tepidity, offer each other mutual counsel and assistance for firmly establishing peace; nor should they be swayed in this by the love or hatred of anyone. But if anyone be found to be negligent in this work of God, let him incur the loss of his dignity.[17]

CANON 22

Summary. Clerics and lay people shall enjoy suitable protection. He who imposes new taxes without the consent of the princes shall be excommunicated.

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[16] Cf. canon 14 of the preceding council.

[17] Cf. canon 12 of the preceding council and canon 17 of I Lateran.

Text. Priests, monks, clerics, lay brothers, travelers, merchants, country people going and coming, and those engaged in agriculture, as well as the animals that carry the seeds to the field, are to enjoy a suitable protection.[18]

Nor shall anyone presume without the authority and consent of the kings and princes to impose upon anyone new demands of tolls or to renew such impositions or in any way increase old ones. If anyone acts contrary to this and does not amend on being warned, let him be cut off from Christian communion till he has made satisfaction.

CANON 23

Summary. Lepers may have their own church, priest, and cemetery. They are exempt from paying tithes.

Text. Since according to the Apostle greater consideration ought to be shown toward the weaker members, there are, nevertheless, some ecclesiastics who, seeking the things that are their own rather than those of Jesus Christ, do not permit lepers, who cannot live with those not so afflicted and cannot assemble with them in the church, to have their own churches and cemeteries or the services of a priest. Since this is at variance with Christian piety, we ordain that they be permitted to have without hindrance their own church wherever a number sufficient to ~~maintain~~ a church with a cemetery and their own priest live together the common life. Let them take care, however, that they do not prejudice the parochial rights of churches already existing. For what is conceded to them for the sake of piety, we do not wish to redound to the injury of others. We decree also that they shall not be compelled to pay tithes either from their gardens or from their animals.

CANON 24

Summary. Christians giving aid to the Saracens are excommunicated, their possessions shall be confiscated, and they themselves reduced to slavery. They also are excommunicated who capture and rob Christians.

Text. Savage cupidity has taken possession of some to such an extent that, while they glory in the Christian name, at the same time they supply the Saracens with arms, iron and bands for the construction of their galleys, and thus become equal and even superior to them in malice, since they furnish them with arms and other necessaries to attack the Christians. There are some also who to satisfy their avarice assume the guidance and piloting of galleys and piratical ships of the Saracens. We decree, therefore, that all these are

[18] Cf. canon 11 of the preceding council.

excommunicated for their iniquity, that their possessions be confiscated by the Catholic princes and magistrates of the cities and that they themselves, if captured, be reduced to slavery by their captors. We command, furthermore, that excommunication be frequently and solemnly pronounced against them by the churches of the maritime cities.

They also are to be excommunicated who capture or rob Roman and other Christians carried on vessels on matters of business or other honest purposes. And those also who, instead of rendering aid as the rule of faith requires, impelled by a damnable avarice, rob Christians who suffer shipwreck, are to be excommunicated if they do not restore the things taken.

CANON 25

Summary. Notorious usurers are denied communion of the altar and, if they die in that sin, also Christian burial. Anyone who accepts their offering, shall be suspended from his office.

Text. Since almost everywhere the crime of usury has developed to such an extent that many, heedless of the strict Scriptural prohibition, pass over other professions to devote themselves to the business of usury, as if it were lawful, we decree that notorious usurers be not admitted to the communion of the altar and, if they die in that sin, that they shall not receive Christian burial. Neither shall anyone accept their offering. He who has taken such an offering or given them Christian burial, shall be compelled to return what he has taken, and, till he has satisfied the wishes of the bishop, let him remain suspended from his office.[19]

CANON 26

Summary. Jews and Saracens may not have in their houses Christian slaves. Those presuming to live with them shall be excommunicated. The testimony of Christians against them is to be accepted. Jews becoming Christians are not to be disinherited.

Text. Jews and Saracens shall not, either under pretext of supporting children or for service or for any other reason, be permitted to have in their houses Christian slaves. Those who presume to live with them shall be excommunicated. The testimony of Christians against Jews is to be accepted in all cases, since they use their witnesses against Christians, and we decree that they be punished with anathema who wish that in this respect Jews be given preference to Christians, since it ought to be that they be subject to the Christians and be treated by them with kindness only. If by the grace of

[19] Kober, *Die Suspension*, pp. 274 f.

God any should be converted to the Christian faith, they shall not be disinherited, for those so converted ought to be in better circumstances than before they received the faith. But if the contrary has taken place, we enjoin the princes and rulers of those localities under penalty of excommunication that they take action to the effect that their inheritance and possessions be restored to them *ex integro.*

CANON 27

Summary. Heretics and all who defend and receive them are excommunicated. If they die in their sin, they shall be denied Christian burial and are not to be prayed for.

Text. Though ecclesiastical discipline contents itself with spiritual judgment and does not inflict bloody punishments, it is, however, aided by the ordinances of Catholic princes, for men often seek a salutary remedy for their souls only when they fear that some severe corporal punishment will be imposed upon them. Wherefore, since in Gascogne, in the territory of Albi, in Toulouse and its neighborhood, and in other places, the perversity of the heretics, whom some call Cathari, others Patarini, and others again Publicani (Pauliciani?), has assumed such proportions that they practice their wickedness no longer in secret as some do, but preach their error publicly and thus mislead the simple and the weak, we decree that they and all who defend and receive them are anathematized, and under penalty of anathema we forbid everyone to give them shelter, to admit them to his land, or to transact business with them. If anyone should fail herein and die in that sin, not under pretext of privileges granted him by us nor by any other subterfuge, shall an offering be made for him nor shall he receive Christian burial.

With regard to the Brabantians, Aragonians, Basques, Navarese, and others who practice such cruelty toward the Christians that they respect neither churches nor monasteries, spare neither widows nor orphans, age nor sex, but after the manner of pagans destroy and lay waste everything, we decree likewise that those who hire or patronize them throughout the regions in which they rave so madly, shall be publicly denounced in the churches on Sundays and on solemn festivals and shall be regarded as subject to the same punishment as the aforesaid heretics; nor shall they be restored to the communion of the Church till they have abjured that pestiferous society and its heresy. Those who are bound to them by any agreement are hereby released from the obligation of fealty, deference, and all service so long as they (the heretics) continue in their iniquity. These and all the faithful we command in remission of their sins that they vigorously oppose such pests and defend with arms the Christian people. Let their possessions be confiscated and let

the princes be allowed to reduce to slavery men of this kind. Those who may in conflict with these heretics die in true repentance, let them not doubt that they will receive the remission of their sins and the fruit of eternal reward.[20] Trusting in the mercy of God and in the authority of the Apostles Peter and Paul, we also grant to the faithful who take up arms against them and at the advice of the bishops or other prelates undertake to conquer them, a remission of two years' penance; or if they are engaged there for a longer period, we leave it to the discretion of the bishops, to whom the care of this matter has been committed, to grant further remission in accordance with the character of the labor performed. Those who refuse obedience to the admonition of the bishops in this matter, are to be denied the reception of the body and blood of the Lord. In the meantime we place under the protection of the Church, as we do the crusaders to the Holy Land, those who in the ardor of faith take up this work of conquering them, and we decree that they remain secure from all disturbances in their possessions as well as in their persons. If anyone shall presume to molest them, let him be excommunicated by the bishop of the locality and let the sentence be observed by all till the things taken from them be returned and a suitable satisfaction made for the loss incurred. Bishops and priests who do not vigorously resist the aforesaid evils shall be deprived of their office till they have obtained the mercy of the Apostolic See.

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20 That is, the remission of the temporal punishment due to their sins by means of a plenary indulgence.

Fourth Lateran Council

History. The Fourth Lateran Council was by far the most important ecclesiastical assembly of the Middle Ages and marks the zenith of ecclesiastical life and papal power. In canon law it is usually cited as "the Great Council," or as "the Great Lateran Council," without further qualification. This distinction it derives from the important and, as compared with the three preceding councils, the unusually large number of its enactments, as well as from the number and rank of many who took part in it. It was the culminating point in the reign of one of the greatest popes of the Middle Ages. From the very beginning of his pontificate, Innocent III had wished to assemble an ecumenical council, but it was only toward its end that his desire could be realized. In the bull of convocation, dated April 19, 1213, which was sent to the patriarchs, archbishops, and bishops of Christendom, both East and West, the Pope states the purpose of the council and outlines the preparations to be made for it. "Two things," he says, "lie particularly near my heart: the regaining of the Holy Land and the reform of the whole Church. Attention to both can hardly be delayed any longer without grave danger. After praying often to God for enlightenment in this matter, and also after frequent consultation with the cardinals and other learned men, I have decided after the manner of the ancient fathers to convoke a general council, by means of which evils may be uprooted, virtues implanted, mistakes corrected, morals reformed, heresies extirpated, the faith strengthened, disputes adjusted, peace established, liberty protected, Christian princes and people induced to aid the Holy Land and salutary decrees enacted for the higher and lower clergy. Since, however, a general council cannot be realized before two years, I shall in the meantime direct that inquiry be made in all provinces as to what has need of Apostolic correction, and shall appoint capable men to inquire into the condition of the Holy Land, so that afterward, if the council approves, I myself may take the lead. Hold yourselves prepared, therefore, to appear before me at the council two and a half years hence, November 1, 1215. In each province only two bishops shall remain at home to attend to its needs, but they and all others who are prevented from being present, must send representatives. Each prelate may bring with him only a moderate retinue, in accordance with the prescription of the Third Lateran Council (canon

4), rather less than more. Cathedral and collegiate chapters also shall send representatives, for with them the council must also occupy itself. In the meantime bishops must carefully investigate and make note of those things that in their respective dioceses need correction, in order to lay them before the council. They must likewise faithfully support and encourage the papal deputies appointed for the Holy Land, and no one may be negligent in carrying out the above instructions without laying himself open to canonical punishment." Similar instructions were dispatched to all Christian kings, to the generals of religious orders, to the heads of the orders of knights, to the cathedral chapter of Constantinople, and to the Catholicos of Armenia. The council was opened November 11, 1215, in the Lateran Basilica, where the three preceding councils had been held; hence it is known as the Fourth Council of the Lateran. There were altogether three sessions, the second of which was held on the twentieth of November, and the last on the thirtieth. There were present the patriarchs of Constantinople and Jerusalem, no less than 412 bishops, 800 abbots and priors, the primate of the Maronites, St. Dominic the founder of the Order of Preachers, and many representatives of chapters and absent prelates. The patriarchs of Alexandria and Antioch were represented by delegates, as were also Emperor Frederick II, Henry the Latin emperor of Constantinople, the Kings of England, France, Aragon, Hungary, Cyprus, Jerusalem, and others. The Pope opened the council with an allocution, taking as his text (Luke 22:15), "With desire I have desired to eat this pasch with you," "*non propter commoditatem terrenam aut gloriam temporalem, sed propter reformationem universalis ecclesiae, ad liberationem potissimum Terrae Sanctae; propter quae duo principaliter et praecipue hoc Sacrum Concilium convocavi.*"

Of the acts of the council we have nothing more than the seventy decrees, which, already formulated, the Pope presented to the assembled bishops for their approval, and a decree relative to a crusade for the liberation of the Holy Land. With two exceptions these seventy decrees are all of a disciplinary nature, designed to correct prevailing abuses.[1]

CANON 1

***Text.* We firmly believe and openly confess that there is only one true God, eternal and immense, omnipotent, unchangeable, incom-**

[1] Mansi, XXII, 954 ff.; Hefele-Leclercq, V, 1316–98, and *Appendix* III; Hergenröther, *Handbuch d. allg. Kirchengeschichte*, II, 5th ed., 475–82; Brischar, *Papst Innocenz III u. seine Zeit*, Freiburg, 1883; Gütschow, *Innocenz III u. England*, München, 1904; Gasquet, *Henry the Third and the Church*, London, 1905; Hill, *A History of European Diplomacy*, I (New York, 1905), 313–31; Mullany, "Innocent III," in *Am. Cath. Quarterly Review*, XXXII (1907), 25–48; *Dict. de théol. cath.*, VIII, 2652–67.

prehensible, and ineffable, Father, Son, and Holy Ghost; three Persons indeed but one essense, substance, or nature absolutely simple; the Father (proceeding) from no one, but the Son from the Father only, and the Holy Ghost equally from both, always without beginning and end. The Father begetting, the Son begotten, and the Holy Ghost proceeding; consubstantial and coequal, co-omnipotent and coeternal, the one principle of the universe, Creator of all things invisible and visible, spiritual and corporeal, who from the beginning of time and by His omnipotent power made from nothing creatures both spiritual and corporeal, angelic, namely, and mundane, and then human, as it were, common, composed of spirit and body. The devil and the other demons were indeed created by God good by nature but they became bad through themselves; man, however, sinned at the suggestion of the devil. This Holy Trinity in its common essense undivided and in personal properties divided, through Moses, the holy prophets, and other servants gave to the human race at the most opportune intervals of time the doctrine of salvation.

And finally, Jesus Christ, the only begotten Son of God made flesh by the entire Trinity, conceived with the co-operation of the Holy Ghost of Mary ever Virgin, made true man, composed of a rational soul and human flesh, one Person in two natures, pointed out more clearly the way of life. Who according to His divinity is immortal and impassable, according to His humanity was made passable and mortal, suffered on the cross for the salvation of the human race, and being dead descended into hell, rose from the dead, and ascended into heaven. But He descended in soul, arose in flesh, and ascended equally in both; He will come at the end of the world to judge the living and the dead and will render to the reprobate and to the elect according to their works. Who all shall rise with their own bodies which they now have that they may receive according to their merits, whether good or bad, the latter eternal punishment with the devil, the former eternal glory with Christ.

There is one Universal Church of the faithful, outside of which there is absolutely no salvation. In which there is the same priest and sacrifice, Jesus Christ, whose body and blood are truly contained in the sacrament of the altar under the forms of bread and wine; the bread being changed (*transsubstantiatis*) by divine power into the body, and the wine into the blood, so that to realize the mystery of unity we may receive of Him what He has received of us. And this sacrament no one can effect except the priest who has been duly ordained in accordance with the keys of the Church, which Jesus Christ Himself gave to the Apostles and their successors.

But the sacrament of baptism, which by the invocation of each Person of the Trinity, namely, of the Father, Son, and Holy Ghost,

is effected in water, duly conferred on children and adults in the form prescribed by the Church by anyone whatsoever, leads to salvation. And should anyone after the reception of baptism have fallen into sin, by true repentance he can always be restored. Not only virgins and those practicing chastity, but also those united in marriage, through the right faith and through works pleasing to God, can merit eternal salvation.[2]

Comment. This decree is the famous confession or exposition of faith directed by the council against the Albigenses, or Cathari, and Waldensians. It begins by asserting the orthodox doctrine regarding the Trinity and, against the dualism of the heretics, declares God the one and only principle of all things visible and invisible. It then treats of the incarnation, and finally of the Church and some of the sacraments. Almost every word of the decree is a polemic against the Albigenses. It emphasizes the doctrine of the real presence, the power of the priesthood, the validity of baptism conferred by anyone on infants and adults alike in conformity with the requirements prescribed by the Church, the restoration to spiritual life by the sacrament of penance, the salvation of those united in marriage if they live in accordance with the will of God, all of which the heretics, particularly the Albigenses, had either entirely rejected or perverted beyond orthodox recognition.

It may be noted that the term "transubstantiation" received ecclesiastical sanction for the first time in this decree, in the words: *Transsubstantiatis pane in corpus et vino in sanguinem potestate divina.* It is traceable to the beginning of the twelfth century. Whether it was used for the first time by Hildebert of Tours (d. 1134) is doubtful, since the genuineness of the sermon in which it occurs is a matter of uncertainty. It was used about the same time by Stephen of Autun (d. 1139) in his treatise *de sacramento altaris*[3] in the passage: *quasi Christus diceret: Panem quem accepi in corpus meum transsubstantiavi.* It was used by Roland Bandinelli (later Alexander III) in his "Sentences" composed about 1150–53,[4] by Stephen of Tournai, and other theologians. The Second Council of Lyons (1274) gave it further sanction in the profession of faith of the Greek Emperor Michael Palaeologus.[5]

CANON 2

Text. We condemn, therefore, and reprobate the book or tract which Abbot Joachim published against Master Peter Lombard con-

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[2] Denzinger, *Enchiridion,* nos. 428–30.
[3] Migne, *PL,* CLXXII, 1293, cap. 14.
[4] Gietl, *Die Sentenzen Rolands, nachmals Papstes Alexander III,* Freiburg, 1891.
[5] Denzinger, no. 465.

cerning the unity or essense of the Trinity, calling him heretical and insane because he said in his *Sentences* that the Father, Son, and Holy Ghost are some supreme entity in which there is no begetting, no begotten, and no proceeding. Whence he asserts that he (Peter Lombard) attributed to God not so much a trinity as a quaternity, namely, three Persons and that common essense as a fourth, clearly protesting that there is no entity that is Father, Son, and Holy Ghost, neither is it essense or substance or nature, though he concedes that the Father, Son, and Holy Ghost are one essense, one substance, and one nature. But he says that such a unity is not a true and proper (*propriam*) unity, but rather a collective one or one by way of similitude, as many men are called one people and many faithful one Church, according to the words: "The multitude of believers had but one heart and one soul" (Acts 4: 32); and, "He who is joined to the Lord, is one spirit" (I Cor. 6: 17); similarly, "He that planteth and he that watereth, are one" (I Cor. 3: 8); and, "So we being many, are one body in Christ" (Rom. 12: 5). Again in the Book of Kings (Ruth): "My people and thy people are one" (Ruth 1: 16). To strengthen this teaching he cites that most important word which Christ spoke concerning the faithful in the Gospel: "I will, Father, that they may be one, as we also are one, that they may be made perfect in one" (John 17: 22 f.). For the faithful of Christ, he says, are not one in the sense that they are some one thing that is common to all, but in the sense that they constitute one Church by reason of the unity of the Catholic faith and one kingdom by reason of the union of indissoluble charity, as we read in the canonical Epistle of St. John: "There are three who give testimony in heaven, the Father, the Word, and the Holy Ghost; and these three are one" (I John 5: 7). And immediately it is added: "And there are three who give testimony on earth, the spirit, the water, and the blood; and these three are one" (I John 5: 8), as it is found in some codices.

But we, with the approval of the holy and general council, believe and confess with Peter (Lombard) that there is one supreme entity, incomprehensible and ineffable, which is truly Father, Son, and Holy Ghost, together (*simul*) three persons and each one of them singly. And thus in God there is only trinity, not quaternity, because each of the three persons is that entity, namely, substance, essense, or divine nature, which alone is the principle of the universe and besides which there is no other. And that entity is not the one begetting or the one begotten or the one proceeding, but it is the Father who begets, the Son who is begotten, and the Holy Ghost who proceeds, in order that there may be distinctions in the Persons and unity in the nature. Though, therefore, the Father is one (being), the Son is another, and the Holy Ghost is another, yet they are not different (*non tamen aliud*); but that which is the Father that is the Son and the Holy Ghost, absolutely the same, since according to

the orthodox and Catholic faith they are believed to be consubstantial. For the Father begetting the Son from eternity imparted to Him His own substance, as He Himself testifies: "That which my Father hath given me, is greater than all" (John 10: 29). And it cannot be said that He gave to Him a part of His substance and retained a part for Himself, since the substance of the Father is indivisible, that is, absolutely simple. But neither can it be said that the Father in begetting transferred His substance to the Son, as if He gave it to the Son without retaining it for Himself, otherwise He would cease to be a substance. It is evident, therefore, that the Son in being begotten received without any diminution the substance of the Father, and thus the Father and Son have the same substance, and thus the Father and Son as well as the Holy Ghost proceeding from both are the same entity. When therefore the Truth prays to the Father for the faithful, saying: "I will that they be one in us, even as we are one" (John 17: 22), this term "one" is understood first for the faithful, as implying a union of charity in grace, then for the divine persons, as implying a unity of identity in nature; as the Truth says in another place: "Be you perfect, as your heavenly Father is perfect" (Matt. 5: 48); as if He would say more clearly: be perfect by the perfection of grace as your heavenly Father is perfect by the perfection of nature, namely, each in his own way, because between the Creator and the creature there cannot be a likeness so great that the unlikeness is not greater. If therefore anyone presume to defend or approve the teaching of the aforesaid Joachim on this point, let him be repressed by all as a heretic.

In this, however, we do not wish to derogate in anything from the monastery of Flora, which Joachim himself founded, since therein is both the regular life and salutary observance, but chiefly because the same Joachim ordered that his writings be submitted to us to be approved or corrected by the judgment of the Apostolic See, dictating a letter which he subscribed with his own hand, in which he firmly confesses that he holds that faith which the Roman Church holds, which by the will of God is the mother and mistress of all the faithful. We also reprobate and condemn the perverse teaching of the impious Amaury (Almaricus, Amalricus) de Bene, whose mind the father of lies has so darkened that his teaching is to be regarded not so much heretical as insane.[6]

Comment. This decree deals with Abbot Joachim of Flora and condemns his treatise *de unitate seu essentia Trinitatis*, directed against Peter Lombard, in which he accused the Master of the *Sentences* of heresy because of his declaration that the Father, Son, and Holy Ghost are *quaedam summa res* in which there is no begetting and no begotten. On the basis of

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[6] Denzinger, nos. 431–33.

this teaching, he argued, we must predicate of God not a trinity but a quaternity, namely, the three persons and that *summa res* as a fourth. He conceded that the Father, Son, and Holy Ghost are *una essentia, una substantia, una natura*, but maintained that that unity is not real but nominal, *unitas non vera et propria, sed solummodo collectiva et similitudinaria*, as many men are called one people, etc. After setting forth the true doctrine, the Pope declares a heretic everyone who in this matter should defend the teaching of Joachim.[7]

In the concluding sentence the Pope condemns the errors of the Amalricians, who, like their founder Amalric de Bene, professed a species of pantheism. The sect included within its ranks many priests and clerics, ten of whom, refusing to retract their errors, were condemned by a council of Paris (1210) and suffered the penalty of death by fire after having been delivered to the secular authority.[8]

CANON 3

Text. **We excommunicate and anathematize every heresy that raises itself against the holy, orthodox and Catholic faith which we have above explained; condemning all heretics under whatever names they may be known, for while they have different faces, they are nevertheless bound to each other by their tails, since in all of them vanity is a common element. Those condemned, being handed over to the secular rulers or their bailiffs, let them be abandoned, to be punished with due justice, clerics being first degraded from their orders. As to the property of the condemned, if they are laymen, let it be confiscated; if clerics, let it be applied to the churches from which they received revenues. But those who are only suspected, due consideration being given to the nature of the suspicion and the character of the person, unless they prove their innocence by a proper defense, let them be anathematized and avoided by all until they have made suitable satisfaction; but if they have been under excommunication for one year, then let them be condemned as heretics. Secular authorities, whatever office they may hold, shall be admonished and induced and if necessary compelled by ecclesiastical censure, that as they wish to be esteemed and numbered among the faithful, so for the defense of the faith they ought**

[7] Innocent III and the council took the Lombard under their protection, while Alexander III in the Third Lateran Council sought to formally condemn him for his "Christological nihilism," which he had adopted from Abelard; from which the Pope was restrained, however, by a number of cardinals and Bishop Adam of St. Asaph. Mansi, XXII, 247; Denifle, *Chartularium Univ. Paris.*, I, nos. 3, 9.

[8] De Wulf, *History of Medieval Philosophy*, I (London, 1926), 191 f.; Denifle, *Chartul.*, I, nos. 11, 12, 22; Baeumker, "Ein Traktat gegen die Amalricianer," in *Jahrb. f. Phil. u. spek. Theologie*, VII (1893), 346–412.

publicly to take an oath that they will strive in good faith and to the best of their ability to exterminate in the territories subject to their jurisdiction all heretics pointed out by the Church; so that whenever anyone shall have assumed authority, whether spiritual or temporal, let him be bound to confirm this decree by oath. But if a temporal ruler, after having been requested and admonished by the Church, should neglect to cleanse his territory of this heretical foulness, let him be excommunicated by the metropolitan and the other bishops of the province. If he refuses to make satisfaction within a year, let the matter be made known to the supreme pontiff, that he may declare the ruler's vassals absolved from their allegiance and may offer the territory to be ruled by Catholics, who on the extermination of the heretics may possess it without hindrance and preserve it in the purity of faith; the right, however, of the chief ruler is to be respected so long as he offers no obstacle in this matter and permits freedom of action. The same law is to be observed in regard to those who have no chief rulers (that is, are independent). Catholics who have girded themselves with the cross for the extermination of the heretics, shall enjoy the indulgences and privileges granted to those who go in defense of the Holy Land.

We decree that those who give credence to the teachings of the heretics, as well as those who receive, defend, and patronize them, are excommunicated; and we firmly declare that after any one of them has been branded with excommunication, if he has deliberately failed to make satisfaction within a year, let him incur *ipso jure* the stigma of infamy and let him not be admitted to public offices or deliberations, and let him not take part in the election of others to such offices or use his right to give testimony in a court of law. Let him also be intestable, that he may not have the free exercise of making a will, and let him be deprived of the right of inheritance. Let no one be urged to give an account to him in any matter, but let him be urged to give an account to others. If perchance he be a judge, let his decisions have no force, nor let any cause be brought to his attention. If he be an advocate, let his assistance by no means be sought. If a notary, let the instruments drawn up by him be considered worthless, for, the author being condemned, let them enjoy a similar fate. In all similar cases we command that the same be observed. If, however, he be a cleric, let him be deposed from every office and benefice, that the greater the fault the graver may be the punishment inflicted.

If any refuse to avoid such after they have been ostracized by the Church, let them be excommunicated till they have made suitable satisfaction. Clerics shall not give the sacraments of the Church to such pestilential people, nor shall they presume to give them Christian burial, or to receive their alms or offerings; otherwise they shall be deprived of their office, to which they may not be restored

without a special indult of the Apostolic See. Similarly, all regulars, on whom also this punishment may be imposed, let their privileges be nullified in that diocese in which they have presumed to perpetrate such excesses.

But since some, under "the appearance of godliness, but denying the power thereof," as the Apostle says (II Tim. 3: 5), arrogate to themselves the authority to preach, as the same Apostle says: "How shall they preach unless they be sent?" (Rom. 10: 15), all those prohibited or not sent, who, without the authority of the Apostolic See or of the Catholic bishop of the locality, shall presume to usurp the office of preaching either publicly or privately, shall be excommunicated and unless they amend, and the sooner the better, they shall be visited with a further suitable penalty. We add, moreover, that every archbishop or bishop should himself or through his archdeacon or some other suitable persons, twice or at least once a year make the rounds of his diocese in which report has it that heretics dwell, and there compel three or more men of good character or, if it should be deemed advisable, the entire neighborhood, to swear that if anyone know of the presence there of heretics or others holding secret assemblies, or differing from the common way of the faithful in faith and morals, they will make them known to the bishop. The latter shall then call together before him those accused, who, if they do not purge themselves of the matter of which they are accused, or if after the rejection of their error they lapse into their former wickedness, shall be canonically punished. But if any of them by damnable obstinacy should disapprove of the oath and should perchance be unwilling to swear, from this very fact let them be regarded as heretics.

We wish, therefore, and in virtue of obedience strictly command, that to carry out these instructions effectively the bishops exercise throughout their dioceses a scrupulous vigilance if they wish to escape canonical punishment. If from sufficient evidence it is apparent that a bishop is negligent or remiss in cleansing his diocese of the ferment of heretical wickedness, let him be deposed from the episcopal office and let another, who will and can confound heretical depravity, be substituted.

CANON 4

Summary. Those baptized by the Latins must not be rebaptized by the Greeks.

Text. Though we wish to favor and honor the Greeks who in our days are returning to the obedience of the Apostolic See by permitting them to retain their customs and rites in so far as the interests of God allow us, in those things, however, that are a danger to souls

and derogatory to ecclesiastical propriety, we neither wish nor ought to submit to them. After the Church of the Greeks with some of her accomplices and supporters had severed herself from the obedience of the Apostolic See, to such an extent did the Greeks begin hating the Latins that among other things which they impiously committed derogatory to the Latins was this, that when Latin priests had celebrated upon their altars, they would not offer the sacrifice upon those altars till the altars had first been washed, as if by this they had been defiled. Also, those baptized by the Latins the Greeks rashly presume to rebaptize, and even till now, as we understand, there are some who do not hesitate to do this. Desirous, therefore, of removing such scandal from the Church of God, and advised by the holy council, we strictly command that they do not presume to do such things in the future, but conform themselves as obedient children to the Holy Roman Church, their mother, that there may be "one fold and one shepherd." If anyone shall presume to act contrary to this, let him be excommunicated and deposed from every office and ecclesiastical benefice.

Comment. One of the outstanding characteristics of the Eastern Church since her separation to our own day has been her unceasing condemnation of Latin customs and disciplinary practices that happen to be not in accord with her own. The Byzantines cannot tolerate any custom or any rite that is different from their own. Hence they deny the validity of our sacraments because of differences of mere ritual. And because of these differences we are regarded as heretics and in league with the powers of darkness. The Roman Church, on the other hand, has never had any objection to the fact of different people having different rites, provided that these do not militate against the canons. She has always been most generous in her recognition that custom and rite are not in themselves essential things. In 1894 Leo XIII, in his Encyclical *Praeclara gratulationis*, which is often described as his testament, in the most courteous manner invited the Eastern Churches to return to communion with us. Thereupon the Patriarch Anthimos VII of Constantinople, with characteristic Byzantine offensiveness, replied by digging up the old list of accusations against us: communion under one kind, azyme bread, epiklesis, clerical celibacy, the *Filioque*, our baptism, and other matters.

With regard to the first point of the canon, that is, the washing of the altar after a Latin priest has celebrated thereon, it may be noted that the Orthodox Church considers the consecration of unleavened bread in the mass as totally unchristian and a return to Jewish superstition. Concerning the second, the Orthodox administer baptism by immersion, and so necessary do they consider this method that they doubt the validity of any

other method. Consequently any and all converts coming to them from the Latins and from Protestants, the Greek-speaking Orthodox rebaptize.[9]

CANON 5

Summary. The council approves the existing order of the patriarchal sees and affirms three of their privileges: their bishops may confer the pallium and may have the cross borne before them, and appeals may be taken to them.

Text. Renewing the ancient privileges of the patriarchal sees, we decree with the approval of the holy and ecumenical council, that after the Roman Church, which by the will of God holds over all others pre-eminence of ordinary power as the mother and mistress of all the faithful, that of Constantinople shall hold first place, that of Alexandria second, that of Antioch third, and that of Jerusalem fourth, the dignity proper to each to be observed; so that after their bishops have received from the Roman pontiff the pallium, which is the distinguishing mark of the plenitude of the pontifical office, and have taken the oath of fidelity and obedience to him, they may also lawfully bestow the pallium upon their suffragans, receiving from them the canonical profession of faith for themselves, and for the Roman Church the pledge of obedience. They may have the standard of the cross borne before them everywhere, except in the city of Rome and wherever the supreme pontiff or his legate wearing the insignia of Apostolic dignity is present. In all provinces subject to their jurisdiction appeals may be taken to them when necessary, saving the appeals directed to the Apostolic See, which must be humbly respected.[10]

CANON 6

Summary. Provincial synods for the correction of abuses and the enforcement of canonical enactments must be held annually. To insure this, reliable persons are to be appointed who will investigate such things as need correction.

Text. In accordance with the ancient provisions of the holy Fathers, the metropolitans must not neglect to hold with their suffragans the annual provincial synods. In these they should be actuated with a genuine fear of God in correcting abuses and reforming morals, especially the morals of the clergy, familiarizing themselves

[9] Hergenröther, *Photius*, III (Regensburg, 1869), 730–89; Fortescue, *The Orthodox Eastern Church*, London, 1908.

[10] Though at the Fourth General Council of Constantinople the Roman legates signed the twenty-first canon, which accorded recognition to that city as second in patriarchal rank, it was not till this fifth canon was approved by the council that the Latin patriarch of that see was formally allowed this place. Cf. canon 3 of the First Council of Constantinople, canon 28 of the Council of Chalcedon, and canon 21 of the Fourth Council of Constantinople.

anew with the canonical rules, particularly those that are enacted in this general council, that they may enforce their observance by imposing due punishment on transgressors. That this may be done more effectively, let them appoint in each and every diocese prudent and upright persons, who throughout the entire year shall informally and without any jurisdiction diligently investigate such things as need correction or reform and faithfully present them to the metropolitan, suffragans, and others in the following synod, so that they may give prudent consideration to these and other matters as circumstances demand; and in reference to those things that they decree, let them enforce observance, publishing the decisions in the episcopal synods to be held annually in each diocese. Whoever shall neglect to comply with this salutary statute, let him be suspended from his office and benefices till it shall please his superior to restore him.

CANON 7

Summary. No custom or appeal shall hinder prelates from correcting abuses and reforming the morals of their subjects. If the chapter neglects to correct the excesses of the canons, it shall devolve upon the bishop to do so. Prelates shall not use this statute as a means of pecuniary gain.

Text. By an irrefragable decree we ordain that prelates make a prudent and earnest effort to correct the excesses and reform the morals of their subjects, especially of the clergy, lest their blood be demanded at their hands. But that they may perform unhindered the duty of correction and reform, we decree that no custom or appeal shall stand in the way of their efforts, unless they shall have exceeded the form to be observed in such cases. The abuses, however, of the canons of the cathedral church, the correction of which has by custom belonged to the chapter, shall, in those churches in which such a custom has hitherto prevailed, by the advice or command of the bishop be corrected within a reasonable time specified by the bishop. Otherwise the bishop, having in mind the interests of God, opposition notwithstanding, shall not delay to correct them by means of ecclesiastical censure according as the *cura animarum* demands. Nor shall he neglect to correct the excesses also of the other clerics (those assisting the canons) according as the *cura animarum* requires, due order, however, being observed in all things. If the canons without a manifest and reasonable cause, chiefly through contempt for the bishop, discontinue divine services, the bishop may, if he wishes, celebrate in the cathedral church, and on his complaint the metropolitan, as delegated by us in this matter, shall so punish them with ecclesiastical censure that for fear of a repetition of the punishment they will not presume to do such things in the future. Let the prelates of the churches, therefore, be

diligently on their guard that they do not convert this salutary decree into a means of personal profit or other objectionable conduct, but let them enforce it earnestly and faithfully if they wish to escape canonical punishment, for in this matter the Apostolic See, on the authority of the Lord, will be most vigilant.

Comment. From the legitimate correction of a superior there may be no appeal, at least *quoad effectum suspensivum*, unless he has exceeded the form to be observed in such matters. In case the chapter neglects to reform itself, it becomes the duty of the bishop to reform it. This is not, properly speaking, a case of devolution, for in case the chapter proves negligent the impediment of custom is removed, and thus the ordinary is permitted to exercise his jurisdiction. Where a custom of self-reform exists, the authority or jurisdiction of the ordinary in the matter is not wholly removed, but is merely dormant or suspended and remains so as long as in virtue of the custom proper steps are taken to curb excesses. When, however, the chapter neglects or refuses to reform itself, the jurisdiction of the ordinary is revived.

Should the chapter in contempt for the bishop declare a discontinuance of divine service (*cessatio a divinis*),[11] the matter is to be referred to the metropolitan. Prelates are not to use this decree as a means of personal gain. What the council forbids in this last sentence is not the imposition of a fine or a pecuniary penalty on delinquent clerics, but the appropriation of such fines by certain bishops to their own personal uses, in contravention of the ancient practice by which these fines were devoted to pious purposes and especially to the relief of the poor.

CANON 8

Summary. Reports of serious irregularities by prelates and inferior clerics must be investigated by the superior. The accused must be given occasion to defend himself and, if found guilty, must be punished accordingly.

Text. **How and when a prelate ought to proceed in the inquiry and punishment of the excesses of subjects (that is, of clerics) is clearly deduced from the authority of the New and Old Testaments, from which the canonical decrees were afterward drawn, as we have long since clearly pointed out and now with the approval of the holy council confirm. For we read in the Gospel that the steward who was accused to his master of wasting his goods, heard him say: "How is it that I hear this of thee? Give an account of thy stewardship, for now thou canst be steward no longer" (Luke 16: 2). And in Genesis the Lord said: "I will go down and see whether they have done according to the cry that is come to me" (Gen. 18: 21). From**

[11] Cf. canon 17 of the Second Council of Lyons.

these authorities it is clearly proved that not only when a subject (that is, a cleric of a lower rank) but also when a prelate is guilty of excesses and these should come to the ears of the superior through complaint and report, not indeed from spiteful and slanderous persons, but from those who are prudent and upright persons, and not only once but often, he must in the presence of the seniors of the church carefully inquire into the truth of such reports, so that if they prove to be true, the guilty party may be duly punished without the superior being both accuser and judge in the matter. But, while this is to be observed in regard to subjects, the observance must be stricter in reference to prelates, who are, as it were, a target for the arrow. Because they cannot please all, since by their very office they are bound not only to rebuke but also at times to loose and bind, they frequently incur the hatred of many and are subject to insidious attacks. The holy fathers, therefore, wisely decreed that accusations against prelates must be accepted with great reserve lest, the pillars being shattered, the edifice itself fall unless proper precaution be exercised by which recourse not only to false but also malicious incrimination is precluded. They wished so to protect prelates that on the one hand they might not be unjustly accused, and on the other hand that they might be on their guard, lest they should become haughtily delinquent; finding a suitable remedy for each disease in the provision that a criminal accusation which calls for *diminutio capitis,* that is, degradation, is by no means to be accepted, *nisi legitima praecedat inscriptio.* But when anyone shall have been accused on account of his excesses, so that the reports and whisperings arising therefrom cannot any longer be ignored without scandal or tolerated without danger, then steps, inspired not by hatred but by charity, must be taken without scruple toward an inquiry and punishment of his excesses. If it is a question of a grave offense, though not one that calls for a *degradatio ab ordine,* the accused must be deprived absolutely of all administrative authority, which is in accordance with the teaching of the Gospel, namely, that the steward who cannot render a proper account of his office as steward be deprived of his stewardship. He about whom inquiry is to be made must be present, unless he absents himself through stubbornness; and the matter to be investigated must be made known to him, that he may have opportunity to defend himself. Not only the testimony of the witnesses but also their names must be made known to him, that he may be aware who testified against him and what was their testimony; and finally, legitimate exceptions and replications must be admitted, lest by the suppression of names and by the exclusion of exceptions the boldness of the defamer and the false witness be encouraged. The diligence of the prelate in correcting the excesses of his subjects ought to be in proportion to the blameworthiness of allowing the offense

to go unpunished. Against such offenders, to say nothing of those who are guilty of notorious crimes, there can be a threefold course of procedure, namely, by accusation, by denunciation, and by inquiry, in all of which, however, proper precaution must be exercised lest perchance by undue haste grave detriment should result. The accusation must be preceded by the *legitima inscriptio*, denunciation by the *caritativa admonitio*, and the inquiry by the *clamosa insinuatio* (*diffamatio*); such moderation to be always used that the *forma sententiae* be governed by the *forma judicii*. The foregoing, however, does not apply to regular clerics, who, when a reason exists, can be removed from their charges more easily and expeditiously.

Comment. The council enumerates a threefold course of procedure against clerical delinquents or offenders: accusation, denunciation, and inquiry. By the first the accuser evokes the dormant authority of the judge to action against the person accused. It must be in writing, and before it is acted upon by the judge there must be the *legitima inscriptio*, that is, the accuser must bind himself in writing to undergo the same penalty that would have been imposed on the prelate or the accused, if in the course of the investigation or trial his charges should be proved groundless. Denunciation is the act of declaring or making known the crime of a person to one who is his superior. It must be preceded by the *caritativa admonitio*, that is, it is not to be made till private admonitions have proved fruitless. The denouncer is not amenable to the law of reprisals, since he does not assume the obligation of proving the charge that he makes. The inquiry, finally, must be preceded by complaints and defamatory reports. In conclusion the council declares that the provisions of the decree do not apply to regular clerics, since these by reason of their vows can be more easily and with less scandal removed from their charges and recalled to their monasteries.

Till the French Revolution this decree was of considerable importance in both ecclesiastical and civil criminal law.

CANON 9

Summary. In cities and dioceses where there are people of different languages, the bishop must provide suitable priests to minister to them. If necessity requires, let him appoint a vicar who shall be responsible to him. There may not, however, be two bishops in the same diocese.

Text. Since in many places within the same city and diocese there are people of different languages having one faith but various rites and customs, we strictly command that the bishops of these cities and dioceses provide suitable men who will, according to the different rites and languages, celebrate the divine offices for them, admin-

ister the sacraments of the Church and instruct them by word and example. But we absolutely forbid that one and the same city or diocese have more than one bishop, one body, as it were, with several heads, which is a monstrosity. But if by reason of the aforesaid conditions an urgent necessity should arise, let the bishop of the locality after due deliberation appoint a prelate acceptable to those races, who shall act as vicar in the aforesaid matters and be subject to him in all things. If anyone shall act otherwise, let him consider himself excommunicated; and if even then he will not amend, let him be deposed from every ecclesiastical ministry, and if need be, let the secular arm be employed, that such insolence may be curbed.

Comment. The establishment of the Latin patriarchate at Constantinople in 1204 made necessary the appointment of clergy to minister to the spiritual needs of the various nationalities. Cities and dioceses comprised a large percentage of Catholics who differed in language and rite from the Latins and who consequently could not be served by the Latins. The present decree prescribes that the bishops provide priests who will celebrate the divine offices for them in their rites and instruct them by word in their own languages. There are not to be two Catholic bishops in the same city or diocese, but, if necessity requires, the bishop may appoint vicars general for the other rites, who, however, shall be subject to him. The idea that one and the same city or diocese was not to have more than one bishop, was for a long time an axiom of canon law. Benedict XIV (1740–58) defended it in *de synodo dioecesano*, lib. II, cap. XII, 46–50. It is now abolished, except in the case of the Italo-Greeks, who are still governed by the provisions of this decree. Wherever throughout the East and in eastern Europe there are communities of various Uniate rites, there is a Catholic bishop for each rite.[12]

CANON 10

Summary. Bishops who are unable to preach the word of God to the people are to provide suitable men to do it for them. They must see to it that the needs of the clergy so appointed are supplied, otherwise their work will prove a failure.

Text. Among other things that pertain to the salvation of the Christian people, the food of the word of God is above all necessary, because as the body is nourished by material food, so is the soul nourished by spiritual food, since "not in bread alone doth man live, but in every word that proceedeth from the mouth of God" (Matt. 4: 4). It often happens that bishops, on account of their manifold duties or bodily infirmities, or because of hostile invasions or other reasons, to say nothing of lack of learning, which must be absolutely condemned in them and is not to be tolerated in the fu-

[12] Fortescue, *The Uniate Eastern Churches*, New York, 1923.

ture, are themselves unable to minister the word of God to the people, especially in large and widespread dioceses. Wherefore we decree that bishops provide suitable men, powerful in work and word, to exercise with fruitful result the office of preaching; who in place of the bishops, since these cannot do it, diligently visiting the people committed to them, may instruct them by word and example. And when they are in need, let them be supplied with the necessities, lest for want of these they may be compelled to abandon their work at the very beginning. Wherefore we command that in cathedral churches as well as in conventual churches suitable men be appointed whom the bishops may use as coadjutors and assistants, not only in the office of preaching but also in hearing confessions, imposing penances, and in other matters that pertain to the salvation of souls. If anyone neglect to comply with this, he shall be subject to severe punishment.

CANON 11

Summary. In every cathedral church and other churches also that have sufficient means, a master is to be appointed to instruct *gratis* the clerics and poor students. The metropolitan church ought to have a theologian who shall teach the clergy whatever pertains to the *cura animarum.*

Text. Since there are some who, on account of the lack of necessary means, are unable to acquire an education or to meet opportunities for perfecting themselves, the Third Lateran Council in a salutary decree (18) provided that in every cathedral church a suitable benefice be assigned to a master who shall instruct *gratis* the clerics of that church and other poor students, by means of which benefice the material needs of the master might be relieved and to the students a way opened to knowledge. But, since in many churches this is not observed, we, confirming the aforesaid decree, add that, not only in every cathedral church but also in other churches where means are sufficient, a competent master be appointed by the prelate with his chapter, or elected by the greater and more discerning part of the chapter, who shall instruct *gratis* and to the best of his ability the clerics of those and other churches in the art of grammar and in other branches of knowledge. In addition to a master, let the metropolitan church have also a theologian, who shall instruct the priests and others in the Sacred Scriptures and in those things especially that pertain to the *cura animarum.* To each master let there be assigned by the chapter the revenue of one benefice, and to the theologian let as much be given by the metropolitan; not that they thereby become canons, but they shall enjoy the revenue only so long as they hold the office of instructor. If the metropolitan church cannot support two masters, then it shall provide for the theologian in the aforesaid manner, but for the one teaching grammar, let it see to

it that a sufficiency is provided by another church of his city or diocese.

CANON 12

Summary. Provincial chapters of regulars are to be held every three years. All not canonically impeded must attend. The chapters to be under the guidance of two Cistercians, and careful attention is to be given to the reform of the order and to regular observance. Visitation of monasteries and nunneries. Ordinaries must strive to reform monasteries and ward off molestation of them by lay officials.

Text. In every ecclesiastical province there shall be held every three years, saving the right of the diocesan ordinaries, a general chapter of abbots and of priors having no abbots, who have not been accustomed to celebrate such chapters. This shall be held in a monastery best adapted to this purpose and shall be attended by all who are not canonically impeded, with this restriction, however, that no one bring with him more than six horses and eight persons. In inaugurating this new arrangement, let two neighboring abbots of the Cistercian order be invited to give them counsel and opportune assistance, since among them the celebration of such chapters is of long standing. These two Cistercians shall without hindrance choose from those present two whom they consider the most competent, and these four shall preside over the entire chapter, so that no one of these four may assume the authority of leadership; should it become expedient, they may be changed by prudent deliberation. Such a chapter shall be celebrated for several consecutive days according to the custom of the Cistercian order. During its deliberations careful attention is to be given to the reform of the order and to regular observance, and what has been enacted with the approval of the four shall be observed inviolably by all, excuses, contradictions, and appeals to the contrary notwithstanding. In each of these chapters the place for the holding of the following one is to be determined. All those in attendance, even if for want of room many must occupy other houses, must live the *vita communis* and bear proportionately all common expenses. In the same chapter religious and prudent persons should be appointed who, in our name, shall visit every abbey in the province, not only of monks but also of nuns, according to a form prescribed for them, correcting and reforming those things that need correction and reform; so that, if they should know that the rector of a locality ought to be removed from office, let them make it known to his bishop, that he may procure his removal; but if he should neglect to do it, then the appointed visitors shall refer the matter to the attention of the Apostolic See. We wish and command that canons regular observe this according to their order. But if in this new arrangement a difficulty should arise which cannot be disposed of by the aforesaid persons, let it be referred without scandal to the judgment of the Apostolic See; in the meantime let the other

things that have been accomplished by amicable deliberation be inviolably observed. Moreover, the diocesan ordinaries must strive so to reform the monasteries subject to them, that when the aforesaid visitors come to them they will find in them more that is worthy of commendation than of correction, taking special care lest the monasteries be oppressed by them with undue burdens. For, while we wish that the rights of the superiors be respected, we do not on that account wish that injury be sustained by inferiors. We strictly command diocesan bishops and persons attending the chapters, that with ecclesiastical censure—every appeal being denied—they restrain advocates, patrons, vicegerents, rulers, consuls, nobles, and soldiers, and all others, from molesting the monasteries either in persons or properties and if perchance these persons should so molest, let the aforesaid bishops and chapter members not neglect to compel these latter to make satisfaction, that the monasteries may serve Almighty God more freely and peacefully.

Comment. The object of this decree was to bring about monastic reform. Every three years a general chapter was to be held in each ecclesiastical province by every religious order that had not been in the habit of holding them. This practice was to be observed also by the canons regular. These orders were to be instructed in the manner of conducting such a chapter by two Cistercian abbots, and the procedure was to be modeled on the chapter of Cîteaux. These two abbots were to choose two of those present, and the four were to preside. Special attention was to be given to the work of reform, and whatever was approved by these four and the majority of the chapter was to be accepted as binding on all. An important feature was the institution of a system of visitors. In conclusion, the diocesan bishops and those attending the chapter were to use every means at their disposal to restrain lay officials from molesting the monasteries. This molestation assumed various forms. Advocates, patrons, nobles, and others never tired of striving to extend their rights in connection with monasteries. They appropriated the tithes and other revenues of the monasteries, interfered with their management, plundered their estates, and brought to the brink of ruin many an institution which they had been entrusted to protect.[18]

CANON 13

Summary. The founding of new religious orders is forbidden. New monasteries must accept a rule already approved. A monk may not reside in different monasteries nor may one abbot preside over several monasteries.

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[18] Cheney, *Episcopal Visitation of Monasteries in the Thirteenth Century*, Manchester, 1931; Vendeuvre, *L'Exemption de visite monastique*, Dijon, 1906.

Text. Lest too great a diversity of religious orders lead to grave confusion in the Church of God, we strictly forbid anyone in the future to found a new order, but whoever should wish to enter an order, let him choose one already approved. Similarly, he who should wish to found a new monastery, must accept a rule already approved. We forbid also anyone to presume to be a monk in different monasteries (that is, belong to different monasteries), or that one abbot preside over several monasteries.

Comment. The multiplication of orders, especially of mendicants, during the eleventh and twelfth centuries, threatened to be a source of confusion in the Church, not only because of their number but also because some of them had drifted into heresy. Matthew of Paris remarked that so great was their number that they overtaxed the resources of the people who supplied them with alms. To avoid this confusion and possible danger to the faith was the purpose of this canon. In the future no new order is to be founded. Anyone wishing to enter an order must choose one already approved. With the issuance of this decree the express or formal approbation of a new order by the proper ecclesiastical authority was made a necessity. St. Dominic was the first to make application for such approval and, though his first petition was refused, its renewal at a later date and his adoption in the meantime of the rule of St. Augustine, secured for him the necessary approbation. He was followed by St. Francis. Up to this time formal approbation was not required, but it was enough not to have been repudiated by ecclesiastical authority. Likewise in the case of a rule, choice must be made of one already approved. In the early days of Christian monasticism the rule of the monks depended largely on the will of the superior. Some of these rules, even of a later period, had not even been consigned to writing. St. Romuald (d. 1027), for instance, left no written rule. His manner of life was transmitted by oral tradition. With the rise of so many orders during the two centuries preceding the council, each or most of them having a different rule, confusion was inevitable.

The Second Council of Lyons (1274) in canon 23 put this decree into execution and absolutely suppressed all mendicant institutions that till then had not been formally approved by the Holy See.

CANON 14

Summary. Clerics, especially those in sacred orders, shall live chastely and virtuously. Anyone suspended for incontinency who presumes to celebrate the divine mysteries, shall be forever deposed.

Text. That the morals and general conduct of clerics may be better reformed, let all strive to live chastely and virtuously, particularly

those in sacred orders, guarding against every vice of desire, especially that on account of which the anger of God came from heaven upon the children of unbelief, so that in the sight of Almighty God they may perform their duties with a pure heart and chaste body. But lest the facility to obtain pardon be an incentive to do wrong, we decree that whoever shall be found to indulge in the vice of incontinence, shall, in proportion to the gravity of his sin, be punished in accordance with the canonical statutes, which we command to be strictly and rigorously observed, so that he whom divine fear does not restrain from evil, may at least be withheld from sin by a temporal penalty. If therefore anyone suspended for this reason shall presume to celebrate the divine mysteries, let him not only be deprived of his ecclesiastical benefices but for this twofold offense let him be forever deposed. Prelates who dare support such in their iniquities, especially in view of money or other temporal advantages, shall be subject to a like punishment. But if those, who according to the practice of their country have not renounced the conjugal bond, fall by the vice of impurity, they are to be punished more severely, since they can use matrimony lawfully.[14]

CANON 15

Summary. Clerics, who after being warned do not abstain from drunkenness, shall be suspended from their office and benefice.

Text. All clerics shall carefully abstain from drunkenness. Wherefore, let them accommodate the wine to themselves, and themselves to the wine. Nor shall anyone be encouraged to drink, for drunkenness banishes reason and incites to lust. We decree, therefore, that that abuse be absolutely abolished by which in some localities the drinkers bind themselves *suo modo* to an equal portion of drink and he in their judgment is the hero of the day who outdrinks the others. Should anyone be culpable in this matter, unless he heeds the warning of the superior and makes suitable satisfaction, let him be suspended from his benefice or office.

We forbid hunting and fowling to all clerics; wherefore, let them not presume to keep dogs and birds for these purposes.

CANON 16

Summary. Clerics are not to engage in secular pursuits, attend unbecoming exhibitions, visit taverns, or play games of chance. Their clothing must be in keeping with their dignity.

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[14] The last sentence of the decree has reference to the clergy of the Eastern Church, who, while they were forbidden to marry after ordination, were permitted to continue in conjugal relations with the wife to whom they had been wedded before the reception of orders. Together with the Latin Empire, a Latin patriarchate had been established

Text. Clerics shall not hold secular offices or engage in secular and, above all, dishonest pursuits. They shall not attend the performances of mimics and buffoons, or theatrical representations. They shall not visit taverns except in case of necessity, namely, when on a journey. They are forbidden to play games of chance or be present at them. They must have a becoming crown and tonsure and apply themselves diligently to the study of the divine offices and other useful subjects. Their garments must be worn clasped at the top and neither too short nor too long. They are not to use red or green garments or curiously sewed together gloves, or beak-shaped shoes or gilded bridles, saddles, pectoral ornaments (for horses), spurs, or anything else indicative of superfluity. At the divine office in the church they are not to wear cappas with long sleeves, and priests and dignitaries may not wear them elsewhere except in case of danger when circumstances should require a change of outer garments. Buckles may under no condition be worn, nor sashes having ornaments of gold or silver, nor rings, unless it be in keeping with the dignity of their office. All bishops must use in public and in the church outer garments made of linen, except those who are monks, in which case they must wear the habit of their order; in public they must not appear with open mantles, but these must be clasped either on the back of the neck or on the bosom.

CANON 17

Summary. Prelates and clerics are commanded in virtue of obedience to celebrate diligently and devoutly the diurnal and nocturnal offices.

Text. It is a matter for regret that there are some minor clerics and even prelates who spend half of the night in banqueting and in unlawful gossip, not to mention other abuses, and in giving the remainder to sleep. They are scarcely awakened by the diurnal concerts of the birds. Then they hasten through matins in a hurried and careless manner. There are others who say mass scarcely four times a year and, what is worse, do not even attend mass, and when they are present they are engaged outside in conversation with lay people to escape the silence of the choir; so that, while they readily lend their ears to unbecoming talk, they regard with utter indifference things that are divine. These and all similar things, therefore, we absolutely forbid under penalty of suspension, and strictly command in virtue of obedience that they celebrate diligently and devoutly the diurnal and nocturnal offices so far as God gives them strength.

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in 1204 at Constantinople and, while many Greeks were thus united to the Latin Church, their clergy were permitted to retain their customs in the matter of marriage.

CANON 18

Summary. Clerics may neither pronounce nor execute a sentence of death. Nor may they act as judges in extreme criminal cases, or take part in matters connected with judicial tests and ordeals.

Text. No cleric may pronounce a sentence of death, or execute such a sentence, or be present at its execution. If anyone in consequence of this prohibition (*hujusmodi occasione statuti*) should presume to inflict damage on churches or injury on ecclesiastical persons, let him be restrained by ecclesiastical censure.[15] Nor may any cleric write or dictate letters destined for the execution of such a sentence. Wherefore, in the chanceries of the princes let this matter be committed to laymen and not to clerics. Neither may a cleric act as judge in the case of the Rottarii,[16] archers, or other men of this kind devoted to the shedding of blood. No subdeacon, deacon, or priest shall practice that part of surgery involving burning and cutting. Neither shall anyone in judicial tests or ordeals by hot or cold water or hot iron bestow any blessing; the earlier prohibitions in regard to dueling remain in force.[17]

CANON 19

Summary. Household goods must not be stored in churches unless there be an urgent necessity. Churches, church vessels, and the like must be kept clean.

Text. We do not wish to leave uncorrected the practice of certain clerics who convert the churches into storehouses for their own household goods and also for those of others,[18] so that the churches have the appearance of the houses of lay people rather than of the house of God, not considering that the Lord does not permit the carrying of a vessel through the temple. There are also others who not only neglect to keep the churches clean but also leave the vessels, vestments, palls, and corporals so unclean that sometimes they are a source of aversion. Wherefore, since the zeal of the house of God hath eaten us up (John 2: 17), we strictly forbid that household goods be placed in the churches, unless by reason of hostile invasion, sudden fire, or other urgent reasons it should become necessary to store them there. When, however, the necessity no longer exists, let

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15 That is, if any official should attempt to compel a cleric against his will by inflicting damage on the church or injury on his person to do what is forbidden in the preceding sentence, let him be censured.

16 Also Ruptarii and Ruptuarii, bands of robbers and plunderers, drawn chiefly from the peasant class.

17 The reference to dueling is added because it also was a means of determining innocence or guilt and had been already condemned. On duels and ordeals, see articles in *Cath. Encyclopedia.*

18 To protect them against theft, etc.

them be returned to their proper place. We command also that the aforesaid churches, vessels, corporals, and vestments be kept clean and bright. For it is absurd to tolerate in sacred things a filthiness that is unbecoming even in profane things.

CANON 20

Summary. In all churches the Eucharist and the chrism must be kept under lock and key. Those who neglect to do this, are to be suspended.

Text. We decree that in all churches the chrism and the Eucharist be kept in properly protected places provided with locks and keys, so that they may not be reached by rash and indiscreet persons and used for impious and blasphemous purposes. But if he to whom such guardianship pertains should leave them unprotected, let him be suspended from office for a period of three months. And if through his negligence an execrable deed should result, let him be punished more severely.

Comment. There was good reason for keeping the chrism and the Eucharist beyond the reach of rash and ignorant laymen, to whom nothing was too sacred to be used for dishonorable purposes. The Synod of Arles (813) in canon 18 and that of Mainz held in the same year in canon 27 insisted that priests keep the chrism under lock and key and forbade them to give it to anyone to be used as medicine or as means of practicing magic or sorcery.[19] The same uses were made of the Eucharist. It may be noted that in certain localities the Eucharist was given to the corpse before burial, as is evident from the prohibitory decisions of the Synod of Hippo in Africa (393), canon 4, the Synod of Auxerre (585 or 578), canon 12, the Trullan Synod (692), canon 83, and others.

CANON 21

Summary. Everyone who has attained the age of reason is bound to confess his sins at least once a year to his own parish priest or with his permission to another, and to receive the Eucharist at least at Easter. A priest who reveals a sin confided to him in confession is to be deposed and relegated to a monastery for the remainder of his life.

Text. All the faithful of both sexes shall after they have reached the age of discretion faithfully confess all their sins at least once a year to their own (parish) priest and perform to the best of their ability the penance imposed, receiving reverently at least at Easter the sacrament of the Eucharist, unless perchance at the advice of

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19 "Presbyteri sub sigillo custodiant chrisma et nulli sub praetextu medicinae vel maleficii donare inde praesumant; quod si fecerint honore priventur." Mansi, XIV, 62, 72.

their own priest they may for a good reason abstain for a time from its reception; otherwise they shall be cut off from the Church (excommunicated) during life and deprived of Christian burial in death. Wherefore, let this salutary decree be published frequently in the churches, that no one may find in the plea of ignorance a shadow of excuse. But if anyone for a good reason should wish to confess his sins to another priest, let him first seek and obtain permission from his own (parish) priest, since otherwise he (the other priest) cannot loose or bind him.

Let the priest be discreet and cautious that he may pour wine and oil into the wounds of the one injured after the manner of a skilful physician, carefully inquiring into the circumstances of the sinner and the sin, from the nature of which he may understand what kind of advice to give and what remedy to apply, making use of different experiments to heal the sick one. But let him exercise the greatest precaution that he does not in any degree by word, sign, or any other manner make known the sinner, but should he need more prudent counsel, let him seek it cautiously without any mention of the person. He who dares to reveal a sin confided to him in the tribunal of penance, we decree that he be not only deposed from the sacerdotal office but also relegated to a monastery of strict observance to do penance for the remainder of his life.[20]

Comment. This is the famous *Omnis utriusque sexus* decree that bound all the faithful who had attained the age of reason to confess all their sins at least once a year to their own parish priest (*sacerdos proprius*) and to receive at least at Easter the sacrament of the Eucharist. By the *sacerdos proprius* is understood the *parochus proprius*, the priest having charge or supervision of a parochial church, today known as the pastor. It is in this sense that the Second Lateran Council used it in canon 10: "We command that churches be not committed to hired priests; but let every church that possesses the means have its own parish priest" (*proprius sacerdos*).[21] Similarly in canon 32 of this series the council designates him *sacerdos proprius, qui parochialem habet ecclesiam.*[22] They must confess all their sins, *omnia sua solus peccata.* This evidently means all mortal sins, otherwise the declaration of the Council of Trent that venial sins may be omitted in con-

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20 Denzinger, nos. 437–38.

21 "Praecipimus etiam ne conductitiis presbyteris ecclesiae committantur, et unaquaeque ecclesia, cui facultas suppetit, proprium habeat sacerdotem." Hefele-Leclercq, V, 728. For the meaning of *sacerdos proprius* before 1215, cf. Kirsch, in *Archiv f. kath. Kirchenrecht*, LXXXIV (1904), 527–37; Natalis Alexander, *Hist. eccl.*, XVI (Paris, 1744), Diss. IV.

22 "Illud autem penitus interdicimus, ne quis in fraudem, de proventibus ecclesiae, quae curam *proprii sacerdotis* debet habere, pensionem alii quasi pro beneficio conferre praesumat." Hefele-Leclercq, V, 1360.

fession without guilt and be expiated by many other remedies, would be unintelligible.[23] And they must do so at least once a year to their own parish priest, and only with his permission can they confess validly to another priest. That this obligation existed and had already gained a recognized measure of acceptance before 1215, there can hardly be any doubt.[24] What the council required was confession at least once a year to the *parochus proprius*. No matter how often the faithful confessed to other priests during the year, once a year at least, unless they have the permission of their own pastor to go to another, they must go to their own parish priest. This is the *raison d'être* of the decree. By this action the council established no new rights and imposed no new obligations, but merely gave ecumenical sanction to or made universal a discipline already in existence; being prompted thereto by the fact that that discipline had in some measure and under certain influences fallen into desuetude. The chief influence in this departure from the old discipline was probably the preaching of the crusades. A statement of this practice prior to 1215 is given us by Alanus de Insulis (d. 1202), surnamed *Doctor Universalis*, in his *Liber poenitentialis*, dedicated to Bishop Henry of Bourges (1183–1200), in which he says: "If a priest knows that a person belonging to another parish comes to him to go to confession, he may not hear his confession, but must send him back *ad proprium sacerdotem*; if, however, he knows that such a person has already made his confession *proprio sacerdoti*, then he may not send him away." [25]

This position is supported by the wording of that part of the decree which requires that anyone wishing to confess to another priest must first seek and obtain permission from his own parish priest, *because* otherwise the other priest cannot validly absolve him. *Si quis autem alieno sacerdoti voluerit justa de causa sua confiteri peccata, licentiam prius postulet et ob-*

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[23] "Nam venialia, quibus a gratia Dei non excludimur et in quae frequentius labimur, quanquam recte et utiliter citraque omnem praesumptionem in confessione dicantur, quod piorum hominum usus demonstrat; taceri tamen citra culpam multisque aliis remediis expiari possunt." Sess. XIV, cap. 5.

[24] During the earlier period there was, of course, no uniformity in the discipline. It varied all the way from three times to the minimum of once a year. A synod held under St. Patrick in the fifth century prescribed communion, preceded by confession, at Easter and Christmas; that of Agde (506) required it three times a year (c. 19, De consecrat., D. II), both of these synods branding as apostates those who neglected to do so. The Synod of Châlons-sur-Saône (813) required it at least three times a year, while that of Augsburg (952) made twice a year obligatory. But even after 1215 there was no strict uniformity. Thus the Synod of Toulouse (1229), in renewing this Lateran decree, enacted that all the faithful of both sexes must confess their sins three times a year, Christmas, Easter and Pentecost, to their own parish priest; those who wilfully neglect to do so, leave themselves open to the suspicion of heresy. Hefele-Leclercq, V, 1498.

[25] "Si alterius sacerdotis parochianus ad alium accedat, ille, ad quem accedit, si hoc sciat, ad *proprium sacerdotem* remittat; si vero cognoscat eum *proprio sacerdoti* confessum fuisse, ejus confessionem non respuat." Migne, *PL*, CCX, 299.

tineat a proprio sacerdote, cum aliter ille ipse non possit solvere vel ligare. By this declaration the council did not then and there withdraw from the other priests the jurisdiction necessary for valid sacramental absolution in the matter concerned, but, as the causal clause, *cum aliter* . . . implies, the fulness of power over his own subjects, aside from the pope and the bishops, rested already at that time and before the council exclusively in the *parochus proprius.* In other words, the causal clause presupposes the existence of the discipline.[26]

In calling attention to and enforcing this discipline, the council was no doubt actuated by violations by priests and laity. On the part of the faithful there was the deliberate evasion of their obligation to make their annual confession to their own parish priest and the practice of going to priests who had no jurisdiction to absolve them. Then again, some parish priests, moved by avarice, did not scruple to lure people of other parishes to their own churches to fulfil their obligation of receiving communion at Easter, for the people paid their tithes in those churches where they received their Easter communion.[27] These two points are among those around which centered the conflicts between the regular and secular clergy before and after 1215.[28] As early as 797, Theodulf bishop of Orleans, in his forty-six *capitula ad presbyteros parochiae suae*, forbade his priests (cap. 14) to lure people belonging to other parishes to their own churches to obtain their tithes. Each one was to be content with his own parish and people and not do to others what he would not have others do to him.[29] The Synod of Palencia in Spain (1322) ordered all pastors to read the above Lateran decree in their churches on all Sundays from Septuagesima to Easter.[30] On this Natalis Alexander comments: *Quod huicce constitutioni occasionem dedit malum, sc. parochiarum confusio, nonnullis adhuc in locis perseverabat, parochianos alienos curati ad se trahebant, avaritiae impulsu, ut eorum augerentur decimae. Illis enim ecclesiis decimae solvebant, in quibus eucharistiam in Paschate susceperant.*[31]

Lastly, he who wilfully neglected his Easter obligation was to be cut off from the Church, *et vivens ab ingressu ecclesiae arceatur, et moriens chris-*

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[26] Kirsch, *op. cit.*, p. 528.

[27] The obligation to receive communion at least at Easter time carried with it the further obligation of its reception in one's own parochial church. This was the mind of the council when it issued this decree, and in this it was merely following ancient custom. The present-day legislation requires that the people be exhorted to satisfy this obligation in their own parochial church and, should they do so in another, they are to present to their own pastor evidence to that effect.

[28] Paulus, *Welt-und Ordensklerus beim Ausgange d. XIII. Jahrh. im Kampfe um d. Pfarr-Rechte*, Essen-Ruhr, 1900.

[29] Migne, *PL*, CV, 195.

[30] C. 27; Mansi, XXV, 722; Hefele-Leclercq, VI, 798.

[31] *Op. cit.*, Diss. IV, no. 36.

tiana careat sepultura. This penalty was not an excommunication *latae sententiae.* The wording of the decree does not warrant such an interpretation. So far as the common law of the Church was concerned, it was an excommunication *ferendae sententiae.* If the delinquent after repeated admonitions failed to comply with the law of the Church, he was to be denounced to the bishop, and then it simply became a matter for him to decide whether it was expedient to impose the censure or not. Thus the Synod of Trier (1227) in canon 3 ordained that all the faithful who had attained the age of discretion must receive communion once a year at least after they have confessed their sins to their own parish priest or with his consent to another. Anyone who abstained from that annual confession without the permission of his pastor, was to be denounced to the bishop.[32]

CANON 22

Summary. Physicians of the body called to the bedside of the sick shall before all else advise them to call for the physician of souls, so that, spiritual health being restored, bodily health will follow.

Text. **Since bodily infirmity is sometimes caused by sin, the Lord saying to the sick man whom he had healed: "Go and sin no more, lest some worse thing happen to thee" (John 5: 14), we declare in the present decree and strictly command that when physicians of the body are called to the bedside of the sick, before all else they admonish them to call for the physician of souls, so that after spiritual health has been restored to them, the application of bodily medicine may be of greater benefit, for the cause being removed the effect will pass away. We publish this decree for the reason that some, when they are sick and are advised by the physician in the course of the sickness to attend to the salvation of their soul, give up all hope and yield more easily to the danger of death. If any physician shall transgress this decree after it has been published by the bishops, let him be cut off (*arceatur*) from the Church till he has made suitable satisfaction for his transgression. And since the soul is far more precious than the body, we forbid under penalty of anathema that a physician advise a patient to have recourse to sinful means for the recovery of bodily health.**

Comment. Pope Pius V in renewing this decree in his constitution *Super gregem*, 1566, went a step farther and declared that physicians are to discontinue their visits to the patient after the third day if in the meantime he has not made his confession. When, however, after that point of time he has confessed his sins, the confessor is to give the physician testimony

[32] Mansi, XXIII, 27; Hefele-Leclercq, V, 1457. Regarding the present legislation on this point, cf. *Am. Eccl. Review,* LXXXVII (1932), 515–21.

of this in a document signed by himself and left with the patient. Physicians transgressing this rule are to be branded forever with the stigma of infamy, absolutely denied the practice of medicine, and ejected from the university and medical associations. No one in the future is to be given a degree in medicine or granted a license to practice medicine anywhere by any college or university, unless he has taken an oath before a notary public and in the presence of witnesses to observe *omnia in praesenti nostra constitutione contenta*, and special mention of this must be made in the license. Any college or university giving a degree or granting a license to practice medicine to anyone without the aforesaid oath, shall be deprived of the right to grant such degree or license in the future.

Both the Lateran decree and the constitution of Pius V covering this point were renewed by Benedict XIII in a Roman synod of 1725, in which he insisted on the vigilance of the bishops regarding the observance of the ordinance and suggested that they make the penalty of excommunication a reserved case.

The last sentence of the decree has reference to various malpractices, among them abortion, which were not uncommon among a certain class of physicians during the later Middle Ages.[33]

CANON 23

Summary. If those to whom it pertains neglect to elect a bishop for a cathedral church within three months, then this duty devolves upon the next immediate superior. If he neglects to do so within three months, he shall be punished.

Text. That the ravenous wolf may not invade the Lord's flock that is without a pastor, that a widowed church may not suffer grave loss in its properties, that danger to souls may be averted, and that provision may be made for the security of the churches, we decree that a cathedral or regular church must not be without a bishop for more than three months. If within this time an election has not been held by those to whom it pertains, though there was no impediment, the electors lose their right of voting, and the right to appoint devolves upon the next immediate superior. Let the one upon whom this right to appoint devolves, having God before his eyes, not delay more than three months to provide canonically and with the advice of the chapter and other prudent men the widowed church with a suitable pastor, if he wishes to escape canonical punishment. This pastor is to be chosen from the widowed church itself, or from another in case a suitable one is not found therein.

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[33] Martène, *Thesaurus novus anecdotorum*, II, 1457.

CANON 24

Summary. Three forms or methods of election are recognized: the normal one by ballot, by compromise, and by quasi-inspiration. No one may vote by proxy.

Text. Since, on account of the different forms of elections which some endeavor to employ, many impediments arise and great danger threatens the widowed churches, we decree that when an election is to take place and all are present who ought, wish, and are able to be present, let three trustworthy members of the assembly be chosen who shall with care collect secretly and one by one the votes of all; and when these have been written down, he is to be considered elected who has obtained all or the majority of the votes of the chapter, absolutely no appeal being allowed. Or the authority of making the choice may be entrusted to some confidential persons, who in the place of all may provide a pastor for the widowed church. An election in any other form is not valid, unless perchance there be absolute unanimity among the electors, as if by divine inspiration. Whoever shall attempt to hold an election contrary to the aforesaid forms, shall for this time be deprived of his vote. We absolutely forbid that anyone appoint a representative in the matter of an election (that is, vote by proxy), unless he be canonically impeded and cannot come, in which case, if need be, let him declare himself to that effect on oath, and then he may choose one of his colleagues at the assembly to represent him. We also disapprove of clandestine elections, and decree that as soon as an election has been held, it must be solemnly made public.

Comment. This decree, like the preceding and following one, deals with the election of bishops to vacant sees. It recognizes three different forms or modes of election: (1) the normal method by ballot. The decree lays down the rule that three trustworthy scrutineers be chosen from the assembled electors, who shall collect secretly (that is, in a whisper) and successively the votes of all; the result was then put in writing and made public. (2) By compromise, when all the electors entrust the choice to one or several specified persons, either within or without the electoral assembly, and confirm beforehand the election made by such person or persons. (3) By quasi-inspiration, when the electors hail the name of a candidate with unanimity, acclamation, and enthusiasm, so that the ballot is omitted as useless since the result is known beforehand.

CANON 25

Summary. He who consents to the election of himself with the aid of the secular power becomes thereby ineligible, and the election is null.

Text. Whoever shall presume to consent to the election of himself through the abusive intervention of the secular authorities contrary to canonical liberty, shall lose the advantage he has gained therefrom and shall be ineligible in the future, nor may he be chosen or raised to any other dignity without a dispensation. Those who presume to hold an election of this kind (that is, those who allow themselves to be influenced by secular authorities), which we declare to be *ipso jure* invalid, let them be absolutely suspended from offices and benefices for a period of three years, and during this time let them be deprived of the right of voting.[34]

CANON 26

Summary. If a prelate through negligence has confirmed the election of an unworthy candidate for the guidance of souls, he is to lose the right of confirming the first successor of such a one and is also to be deprived of the revenue of his benefice, and the one unworthily promoted is to be removed. If his action was prompted by malice, a severer penalty is to be imposed on him.

Text. Nothing is more injurious to the Church of God than the selection of unworthy prelates for the direction of souls. Wishing, therefore, to apply the necessary remedy to this evil, we decree by an irrefragable ordinance that when anyone has been elected for the guidance of souls, he to whom the confirmation of the election belongs shall carefully investigate the process and circumstances of the election as well as the person of the one elected, and only when everything proves to be satisfactory may he confirm. If through carelessness the contrary should take place, then not only the one unworthily promoted is to be removed, but the one also who furthered such promotion (by confirmation) is to be punished. The latter's punishment, we decree, shall consist in this, that when it is agreed that through negligence he confirmed a person who lacks sufficient knowledge or is wanting in integrity of morals or is not of legitimate age, not only is he to lose the right of confirming the first successor of such a person, but, that he may not in some case escape punishment, he is also to be deprived of the revenues of his benefice till he be deemed worthy of pardon. If, however, the evidence shows that his action was inspired by malice, a severer punishment is to be imposed on him. Bishops also, if they wish to escape canonical punishment, shall take the necessary precaution to promote to sacred orders and ecclesiastical dignities only such as are qualified to discharge worthily the duties of the office committed to them. Those who are immediately subject to the Roman pontiff, must appear personally before him for confirmation if this can be done conveniently, otherwise they may send suitable persons from whom may be ascertained the necessary information regarding the

[34] Kober, *Die Suspension*, 255 ff.

process of the election and the person of the one elected; so that only after a thorough investigation by the pope will those elected obtain the plenitude of their office, provided, of course, there be no canonical obstruction. Those who live at a great distance, that is, outside of Italy, if they have been elected ~~unanimously~~, may in the meantime and by way of exception (*dispensative*), on account of the needs of the churches, administer the respective offices in matters spiritual and temporal, so, however, that they alienate absolutely nothing belonging to the churches. The consecration or benediction let them receive as has so far been the custom.[35]

CANON 27

Summary. Incompetent persons must not be promoted to the priesthood or given the direction of souls.

Text. Since the direction of souls is the art of arts, we strictly command that bishops, either themselves or through other qualified men, diligently prepare and instruct those to be elevated to the priesthood in the divine offices and in the proper administration of the sacraments of the Church. If in the future they presume to ordain ignorant and unformed men (a defect that can easily be discovered), we decree that both those ordaining and those ordained be subject to severe punishment. In the ordination of priests especially, it is better to have a few good ministers than many who are no good, for if the blind lead the blind both will fall into the pit (Matt. 15: 14).

CANON 28

Summary. He who seeks and obtains permission to resign, must do so.

Text. There are some who urgently seek permission to resign and, after obtaining such permission, neglect to do so. But since in requesting a resignation they seemed to have had in view the needs of the churches over which they preside or their own salvation, neither of which we wish to be impeded, whether by the sophistries of self-seekers or by mere instability, we decree that they be compelled to resign.

CANON 29

Summary. Anyone having a benefice with the *cura animarum* annexed, if he accepts another, shall lose the first; and if he attempts to retain it, he shall lose the other also. After the reception of the second benefice, the first may be freely conferred on another. If he to whom that collation belongs should delay beyond six months, then it shall devolve on another and the former shall indemnify the church for the losses incurred during the vacancy.

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[35] Cf. III Lateran Council, canon 3, and II Council of Lyons, canon 4.

Text. With much foresight it was prohibited in the Lateran Council [36] that no one should, contrary to the sacred canons, accept several ecclesiastical dignities or several parochial churches; otherwise the one receiving should lose what he received, and the one who bestowed be deprived of the right of collation. But since, on account of the boldness and avarice of some, the aforesaid statute has thus far produced little or no fruit, we, wishing to meet the situation more clearly and emphatically, declare in the present decree that whoever shall accept a benefice to which is annexed the *cura animarum* after having previously obtained such a benefice, shall *ipso jure* be deprived of this (the first one); and if perchance he should attempt to retain it, let him be deprived of the other one also. He to whom the collation of the first benefice belongs may freely confer it, after the incumbent has accepted a second, on anyone whom he may deem worthy; should he delay to do so beyond a period of six months, then in accordance with the decree of the Lateran Council,[37] let not only its collation devolve on another, but also let him be compelled to indemnify the church in question from his own resources equal to the amount of the revenues drawn from it during its vacancy. The same we decree is to be observed in regard to dignities (*personatus*), adding, that no one may presume to have several dignities in the same church, even though they have not the *cura animarum* annexed. Only in the case of eminent and learned persons who are to be honored with major benefices, can the Apostolic See, if need be, grant a dispensation.

CANON 30

Summary. The provincial synod is to suspend from the collation of benefices those who after two admonitions confer benefices on unworthy persons. The removal of this suspension the pope reserves to himself or to the patriarch of the one suspended.

Text. It is a very inconsistent and grave matter that some bishops, when they can promote suitable men to ecclesiastical benefices, do not fear to choose unworthy ones, who lack integrity of morals and sufficient knowledge, following the carnal and inordinate affections for their kindred rather than the judgment of reason. The great detriment that thus accrues to the churches no one of sound mind is ignorant of. Wishing, therefore, to cure this disease, we command that unworthy persons be rejected and suitable ones, who will and can render to God and the churches an acceptable service, be chosen; and let a careful investigation in regard to this matter be made in the annual provincial synod. Anyone who has been found culpable after the first and second admonition, let him be suspended by the

[36] Cf. III Lateran Council, canon 13.
[37] *Ibid.*, canon 8.

synod from conferring benefices, and in the same synod let a prudent and upright person be appointed who may take the place of the one suspended. The same is to be observed in regard to the chapters that prove delinquent in this matter. An offense of this kind on the part of a metropolitan must be made known by the synod to a higher superior. That this salutary provision may be more effectively observed, such a sentence of suspension may by no means be removed except by the authority of the Roman pontiff or by the patriarch of the one suspended, that in this matter also the four patriarchal sees may be specially honored.

CANON 31

Summary. Illegitimate sons of canons may not be appointed to churches in which their fathers serve. Such appointments are invalid.

Text. To destroy that worst of corruptions that has grown up in many churches, we strictly forbid that the sons of canons, especially the illegitimate ones, be made canons in the same secular churches in which their fathers have been appointed. Such appointments, we decree, are invalid; those who presume to make them, let them be suspended from their benefices.[38]

CANON 32

Summary. The rector of a church, notwithstanding the custom of bishops and patrons, must have a sufficient portion of the revenues of the church. He who has a parochial church must serve it himself. If another be annexed to it, a vicar must be appointed for the latter, who shall enjoy a *portio congruens* of its revenues.

Text. In some localities a vice has grown up, namely, that patrons of parochial churches and some other persons (including bishops) arrogate to themselves the revenues of those churches, leaving to the priests attached to them such a meager portion as to deprive them of a decent subsistence. For we have learned from a source the authority of which is unquestionable that in some places the parochial clergy receive for sustenance only a *quarta quartae,* that is, one sixteenth of the tithes. Whence it is that in these localities there seldom is found a parochial priest who possesses more than a very limited knowledge of letters. Since therefore the mouth of the ox that threshes should not be muzzled, and he who serves the altar should live by the altar, we decree that no custom on the part of a bishop, patron, or anybody else shall stand in the way of priests receiving a *portio sufficiens.*

He who has a parochial church must serve it himself and not entrust its administration to a vicar, unless perchance there be a

[38] See II Lateran Council, canon 21.

parochial church annexed to the prebend or dignity, in which case we grant that he who has such a prebend or dignity, since it behooves him to serve in the major church, may ask to have appointed for the parochial church a suitable and irremovable vicar, who, as was said before, shall enjoy a *portio congruens* of the revenues of that church; otherwise by the authority of this decree let him be deprived of it and let it be conferred on another who will and can fulfil the aforesaid requirements. We also absolutely forbid that anyone presume to confer fraudulently on another a pension as a benefice from the revenues of a church that ought to have its own priest (*proprius sacerdos*).

CANON 33

Summary. Prelates may demand procurations only when they conduct visitations and then they must observe the restrictions of the Lateran Council. On their visitations they should devote themselves to preaching and reform.

Text. The *procurationes*[39] which by reason of visitation are due to bishops, archdeacons, and others, also to legates and nuncios of the Apostolic See, are, except in a case of manifest and urgent necessity, to be demanded only when they personally conduct the visitation, and then they must observe the restrictions made by the Lateran Council[40] in regard to the number of horses and persons accompanying them. This restriction being observed, should the legates and nuncios of the Apostolic See find it necessary to make a delay in any place, to avoid being too great a burden on the place, let them receive moderate procurations from other churches or persons who have not yet been burdened in the way of supplying such sustenance; so that the number of procurations may not exceed the number of days of the delay, and should some procuration by itself not suffice, let two or more be united in one. Moreover, those conducting the visitation shall not seek their own interests, but those of Jesus Christ, devoting themselves to preaching, exhortation, correction, and reform, that they may bring back fruit that perishes not. Whoever shall presume to act contrary to this decree, shall not only return what he received, but to the church that he so oppressed he shall also make compensation equivalent to his injustice.

CANON 34

Summary. Prelates are not to take from their subjects more than is due to them. Those who act contrary to this must make restitution and also give an equal amount to the poor.

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[39] The hospitality or procuration extended to the bishop and his assistants in the course of his canonical diocesan visitation.

[40] See III Lateran Council, canon 4.

Text. Since very many prelates, that they may provide papal legates and others with procurations and the like, extort from their subjects more than they hand over to them (to the legates), and, chasing after gain to their own damnation, seek among their subjects plunder rather than help, we forbid that this be done in the future. If anyone perchance should presume to act contrary to this decision, he shall not only restore what he has thus extorted, but he shall also be compelled to give an equal amount to the poor. If the superior with whom a complaint in regard to this matter has been lodged, proves negligent in the execution of this decree, let him be subject to canonical punishment.

CANON 35

Summary. An appellant, feeling that he has good grounds for an appeal before sentence, must make those grounds known to the judge of the first instance. If sufficient, this is to be made known to the superior judge; if insufficient, the latter must return the appellant to the judge of the first instance.

Text. That proper respect may be shown the judges and that the interests of the litigants in the matter of labor and expenses may be duly considered, we decree that when anyone proceeds against an adversary before a competent judge, he shall not without good reason appeal to a higher judge before sentence is pronounced, but shall continue his case before the same judge (that is, of the first instance), even if he say that he has sent a message to the superior judge or has received letters from the same, as long as the letters have not been given to the delegated judge. But if he thinks he has sufficient ground for an appeal, he must make known this ground to the same judge, and, if it be found legal, let it be made known to the superior judge; if the superior judge finds the ground for an appeal insufficient, he must return the appellant to the judge of the first instance, who shall condemn him to pay the expenses also of the other party. Otherwise let him proceed, saving, of course, the ordinances governing the *causae majores,* which must be referred to the Apostolic See.

CANON 36

Summary. If a judge from whose interlocutory sentence an appeal has been taken does not execute it, he can proceed with the principal cause.

Text. When an ordinary or delegated judge has pronounced a threat or an interlocutory sentence, the execution of which would be oppressive to one of the litigants, but following prudent counsel he refrains from carrying into effect this threat or interlocutory sentence, he can proceed with the principal cause, even if an appeal has been taken from such a threat or interlocutory sentence (pro-

vided he be not suspected from another legitimate source), so that the progress of the case may not be delayed by trifling circumstances.

CANON 37

Summary. No one may by means of Apostolic letters be summoned before a judge who is distant more than two days from his diocese, except with the consent of both parties or express mention is made of this decree. Without an order from the other party, such letters are invalid.

Text. Some, abusing the good will of the Apostolic See, attempt to obtain from it letters whereby their disputes may be referred to judges residing at a remote distance. This they do to fatigue the accused with labor and expenses, that thus he may be compelled to yield in the matter under dispute or by payment free himself from the vexations of the plaintiff. Since however a legal trial ought not to open the door to injustice, as is forbidden by the law, we decree that no one may by means of Apostolic letters be summoned before a judge who is distant more than two days from his diocese, except with the consent of both parties or express mention is made of this decree.

There are also others who, turning themselves to a new kind of commercialism, that they may revive old complaints or introduce new questions, fabricate causes, on the strength of which they seek letters from the Apostolic See without a mandate from the person for whom they act, which letters they offer for sale either to the accused party that with their aid he may not be exposed to the loss of labor and expenses, or to the plaintiff that with these he may fatigue his opponent by undue vexations. Since, however, disputes are to be restricted in number rather than multiplied, we decree that if anyone shall in the future presume to seek Apostolic letters upon any question without a special mandate from the person for whom he is acting, such letters shall be regarded as invalid, and he shall be punished as a falsifier, unless perchance it be a question of persons from whom a mandate ought not be legally required.

CANON 38

Summary. A judge must employ a notary or two competent men to put in writing the acts of the judicial process, so that if a dispute arise regarding any action of the judge, the truth can be established by referring to these documents. If any difficulty should arise because of a neglect of this, let the judge be punished.

Text. Since against the false assertion of an unjust judge the innocent party sometimes cannot prove the truth of a denial, because by the very nature of things there is no direct proof of one denying a fact, that falsity may not prejudice the truth, and injustice may

not prevail over justice, we decree that in an ordinary as well as extraordinary inquiry (*judicium*) let the judge always employ either a public person (if he can be had) or two competent men who shall faithfully take down in writing all the acts of the inquiry, namely, citations and delays, refusals and exceptions, petitions and replies, interrogations and confessions, the depositions of witnesses and presentation of documents, interlocutions, appeals, renunciations, decisions, and other acts which take place must be written down in convenient order, the time, places, and persons to be designated. A copy of everything thus written is to be handed to each of the parties, the originals are to remain in possession of the writers; so that if a dispute should arise in regard to any action of the judge, the truth can be established by a reference to these documents. This provision is made to protect the innocent party against judges who are imprudent and dishonest. A judge who neglects to observe this decree, if on account of this neglect some difficulty should arise, let him be duly punished by a superior judge; nor is there any presumption in favor of doing things his way unless it be evident from legitimate documents in the case.

CANON 39

Summary. Anyone who knowingly accepts a stolen article must restore it to the one from whom it was taken.

Text. It often happens that a thief transfers to another what he has unjustly taken, and the one robbed is rendered helpless in any process against the possessor to obtain restitution, because the claim of possession having vanished on account of the difficulty or lack of proof, the right of ownership ceases. Wherefore, notwithstanding the rigor of the civil law, we decree that if anyone in the future shall knowingly accept such an article, thus becoming a participant in the theft—for after all there is little difference, especially when it is a question of danger to the soul, whether one holds unjustly or takes what belongs to another—the one robbed is to be assisted to obtain restitution from such a possessor.

CANON 40

Summary. The plaintiff is still the owner of the article that has for one year by violence or deceit been withheld from him.

Text. It sometimes happens that the plaintiff to whom, in consequence of the non-appearance (*contumacia*, that is, disobedience) of the opposing party, the possession of the object in dispute is judicially awarded, cannot on account of the violence or deceit of the accused obtain actual possession for a whole year, and thus,

since in the opinion of many he is not after the lapse of a year to be regarded as the owner, the malice of the accused gains the advantage. Therefore, that the condition of the disobedient may not be better than that of the obedient, we decree that in the aforesaid case even after the lapse of a year the plaintiff is the true owner.

In general we forbid that decisions in ecclesiastical matters be referred to a layman, because it is not becoming that a layman should arbitrate in much matters.

CANON 41

Summary. No prescription is valid unless it rests on good faith.

Text. Since all that is not of faith is sin (Rom. 14: 23), we decree that no prescription, whether canonical or civil, is valid unless it rests on good faith; because in a general way a prescription that cannot be maintained without mortal sin is in conflict with all law and custom. Wherefore it is essential that he who holds a prescription should at no time be aware of the fact that the object belongs to another.

CANON 42

Summary. No cleric may so extend his jurisdiction as to become detrimental to secular justice.

Text. As desirous as we are that laymen do not usurp the rights of clerics, we are no less desirous that clerics abstain from arrogating to themselves the rights of laymen. Wherefore we forbid all clerics so to extend in the future their jurisdiction under the pretext of ecclesiastical liberty as to prove detrimental to secular justice; but let them be content with the laws and customs thus far approved, that the things that are Caesar's may be rendered to Caesar, and those that are God's may by a just division be rendered to God.

CANON 43

Summary. Clerics under no obligation to laymen in matters temporal are not bound to take an oath of fidelity to them.

Text. Some laymen (that is, princes) attempt to usurp too much of the divine right when they compel ecclesiastical persons who are under no obligation to them in matters temporal, to take an oath of fidelity to them. Wherefore, since according to the Apostle, "To the Lord the servant standeth or falleth" (Rom. 14: 4), we forbid by the authority of the sacred council that such clerics be forced by secular persons to take an oath of this kind.

CANON 44

Summary. Alienation of ecclesiastical properties by laymen without the legitimate consent of ecclesiastical authority is forbidden.

Text. Since no power to dispose of ecclesiastical properties has been given to laymen, even though they be pious, their duty being to obey, not to command, we regret that in some of them charity has grown so cold that they do not fear in their laws or rather monstrosities (*confictionibus*) to attack the immunity of ecclesiastical liberty, which not only the holy fathers but also the secular princes have fortified with many privileges; presuming illicitly that power not only in the matter of the alienation of fiefs and other ecclesiastical possessions and of the usurpation of jurisdictions, but also in the matter of mortuaries and other things that seem annexed to the spiritual right. Wishing, therefore, in this matter to secure the churches against loss and to provide against such injustice, we decree with the approval of the sacred council that laws of this kind and appropriations of fiefs and other ecclesiastical properties made without the legitimate consent of ecclesiastical persons under pretext of lay power, do not hold, since they cannot be called laws but rather want of law or destruction and usurpation of jurisdiction, and those having recourse to such presumptions are to be checked by ecclesiastical censure.

CANON 45

Summary. Patrons and others who exceed their rights in the matter of church government are to be restrained by censures. If they kill or mutilate a cleric, they shall lose their rights and to the fourth generation their posterity shall be excluded from the clerical state.

Text. In some provinces patrons, vicegerents, and advocates of churches have so far advanced in insolence that not only do they create difficulties and mischief when vacant churches are to be provided with competent pastors, but they also presume to administer the possessions and other ecclesiastical goods at their own will; and what is worse, they do not fear to put the prelates to death. Since, therefore, what has been ordained as a means of defense must not be perverted into an instrument of destruction, we expressly forbid patrons, advocates, and vicegerents in the future to extend their jurisdiction in the aforesaid matter beyond what is permitted them by law, and should they act contrary to this, let them be restrained by canonical penalties. With the approval of the holy council we decree that if patrons, advocates, feudal tenants, vicegerents, or other beneficiaries should presume either *per se* or *per alios* to kill or mutilate the rector of some church or another cleric of that

church, the patrons shall lose absolutely their right of patronage, the advocates their office of counselor, the feudal tenants their fief, the vicegerents their vicegerency, and beneficiaries their benefice. That the punishments may not be impressed upon the memory less deeply than the excesses, not only shall their heirs be deprived of all favors accruing to them from the aforesaid offices, but to the fourth generation the posterity of such shall be absolutely excluded from the clerical state, nor may they hold the office of prelate in religious houses, unless by an act of mercy they have received a dispensation.

CANON 46

Summary. Clerics should not contribute to the needs of cities and other localities, even where the resources of the lay people do not suffice, without first consulting the Roman pontiff. Laws by those excommunicated are null. Rulers remain excommunicated after the expiration of their term of office till they have made satisfaction.

Text. Against magistrates and rulers of cities and others who strive to oppress churches and ecclesiastical persons with taxes and other exactions, the Lateran Council,[41] desiring to protect ecclesiastical immunity, prohibited actions of this kind under penalty of anathema, commanding that transgressors and their abetters be punished with excommunication until they make suitable satisfaction. But, if the bishop with his clergy should perceive such necessity or utility and without compulsion decide that the aid of the churches ought to be enlisted to meet the needs where the resources of the lay people do not suffice, let the aforesaid lay people accept such assistance humbly, devoutly, and with gratitude. However, on account of the boldness of some, let them first consult the Roman pontiff, to whom it belongs to attend to common needs. But, if even this does not allay the malice of some toward the Church of God, we add that the laws and enactments which have been promulgated by excommunicated persons in this matter or by their orders, be considered null and void and at no time whatever be regarded as valid. But, since fraud and deception ought not to protect anyone, let no one be deceived by the illusion that, although a ruler may incur anathema during the period of his incumbency, yet on the expiration of his term of office there will be no compulsion to make due satisfaction. For both he who refuses to make satisfaction and his successor, if they do not make satisfaction within a month, we decree that they remain bound by ecclesiastical censure until they have made suitable satisfaction, since he assumes the burden who is successor in the honor.

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[41] See III Lateran Council, canon 9.

CANON 47

Summary. Prelates are not to excommunicate subjects without a previous warning and without a reasonable cause; those guilty of this shall be punished. A subject also shall be punished who falsely protests that he has been unjustly excommunicated.

Text. With the approval of the holy council we prohibit the promulgation of the sentence of excommunication against anyone without a previous warning and in the presence of suitable persons by whom, if need be, such admonition can be proved. Should anyone act contrariwise, even if the sentence of excommunication is a just one, let him know that he is forbidden entrance to the church for a period of one month, which punishment, however, is to be altered should it be deemed advisable. Let also proper precaution be taken against excommunicating anyone without a just and reasonable cause; should this perchance have happened and he who imposed the sentence does not care to withdraw it without complaint, then the one injured may take his complaint of unjust excommunication to a superior, who, if there be no danger in delay, shall send him back to the excommunicator with the command that he absolve him within a specified time; otherwise he himself, should it seem fit, after the presentation of a sufficient reason, will grant him the required absolution either *per se* or *per alium*. When it is an evident case against the excommunicator of unjust excommunication, let him be condemned to pay all the expenses and to repair all the damages incurred by the one unjustly excommunicated; if, however, the gravity of his fault demands it, let him be punished in accordance with the judgment of the superior, since it is not a trivial fault to impose such a punishment on an innocent person, unless per chance he erred from a probable cause, especially if there was apparently good ground for his action. But if against the sentence of excommunication no reasonable proof was offered by the complainant, then for the unjust annoyance of his complaint let him be condemned to pay the expenses and repair the damages, or else let him be punished in accordance with the decision of the superior, unless perchance probable error likewise excuses him; and in regard to the matter for which he was excommunicated, through an adequate pledge let him be compelled to make satisfaction, or let the original sentence be reimposed even for the purpose of forcing him to make condign satisfaction. But if the judge, recognizing his error, is prepared to revoke such a sentence, and he on whom it was imposed appeals against such a revocation unless satisfaction is made, let him not heed the appeal unless it be an error about which there can be a just doubt, and then on the receipt of a satisfactory pledge that he will obey the summons of him to whom the appeal

has been made, or of one delegated by him, let him absolve the one excommunicated and thus he will in no way incur the penalties prescribed; let him be careful, however, not to forge an error to the detriment of another if he wishes to escape canonical punishment.

CANON 48

Summary. Provision is made that no one may through frivolous refusal deny or reject the jurisdiction of his judge.

Text. By a special prohibition it has been provided that a sentence of excommunication be promulgated against no one without a previous warning. Wishing to forestall any attempt on the part of the one thus warned to avoid, under pretext of deceitful refusal or appeal, the inquiry of the one giving the admonition, we decree that, should he assert that he entertains a suspicion in regard to the judge, let him in the presence of the judge indicate the cause of his just suspicion, and let him with his opponent, or if he has no opponent, with the judge, conjointly choose arbiters, or if together they cannot agree, let them choose without ill will two, he one and the judge the other, who may inquire into the cause of the suspicion; and if they cannot come to an agreement, let them ask for a third party, so that what two of them decide may obtain greater weight. Let them know also that, by reason of a strict precept enjoined by us in virtue of obedience under witness of the divine Judge, they are bound to execute this faithfully. If the true cause of the suspicion has not been proved by them within a reasonable period of time, let the judge use his jurisdiction; but if it has been legitimately proved, then let the judge with the consent of the one who suspected him commit the matter to a competent person, or let him submit it to the superior, that the latter may take such action in his regard as should be taken.

Moreover, in case the one warned should resort to an appeal, let no heed be given to a provocation of this kind if from the evidence of the case or from his confession or from another source his guilt has been clearly established, since the remedy of appeal was not instituted for the defense of iniquity but for the protection of the innocent. If his guilt is doubtful, that he may not impede the process of the judge by recourse to a frivolous appeal, let him explain in the judge's presence the probable ground of the appeal, namely, such a ground as, if proved, would be regarded as valid. If he has an opponent, the cause of the appeal is to be continued within a period fixed by the same judge, due consideration being given to the distance, time, and nature of the business; if he does not care to continue it, then, notwithstanding the appeal, let the judge proceed with it. If there is no opponent and the cause of the

appeal has been proved before the superior judge, let the latter exercise his jurisdiction. But, if the appellant fails in his proof, then the case is to be returned to the judge from whom he deceitfully appealed.

These two aforesaid decrees, however, we do not wish to be applied to regulars, who have their own special observances.

CANON 49

Summary. The sentence of excommunication is not to be imposed with a view of satisfying greed, and anyone so guilty is to be severely punished.

Text. Under threat of the divine Judge we absolutely forbid that anyone, impelled solely by greed, dare bind one with the chain of excommunication or absolve one so bound, especially in those regions where it is customary, when the one excommunicated is absolved, to impose a pecuniary punishment on him; and we decree that when it is agreed that the sentence of excommunication was an unjust one, the excommunicator be compelled by ecclesiastical censure to restore the money thus extorted; and, unless he was deceived by probable error, let him make full compensation for the injury sustained. If he fails to do this, let other penalties be imposed.

CANON 50

Summary. The prohibitions against marriage in the second and third degrees of affinity and against the union of the offspring from second marriages to a relative of the first husband, are removed. This prohibition does not apply beyond the fourth degree of consanguinity and affinity.

Text. It must not be deemed reprehensible if human statutes change sometimes with the change of time, epecially when urgent necessity or common interest demands it, since God himself has changed in the New Testament some things that He had decreed in the Old. Since, therefore, the prohibition against the contracting of marriage *in secundo et tertio genere affinitatis* and that against the union of the offspring from second marriages to a relative of the first husband, frequently constitute a source of difficulty and sometimes are a cause of danger to souls, that by a cessation of the prohibition the effect may cease also, we, with the approval of the holy council, revoking previous enactments in this matter, decree in the present statute that such persons may in the future contract marriage without hindrance. The prohibition also is not in the future to affect marriages beyond the fourth degree of consanguinity and affinity; since in degrees beyond the fourth a prohibition of this kind cannot be generally observed without grave inconvenience. This quaternary number agrees well with the prohibition of cor-

poral wedlock of which the Apostle says that "the wife hath not power of her own body, but the husband; and in like manner the husband also hath not power of his own body, but the wife" (I Cor. 7:4); because there are four humors in the body, which consists of four elements. Since therefore the prohibition of conjugal union is restricted to the fourth degree, we wish that it remain so *in perpetuum*, notwithstanding the decrees already issued relative to this matter either by others or by ourselves, and should anyone presume to contract marriage contrary to this prohibition, no number of years shall excuse him, since duration of time does not palliate the gravity of sin but rather aggravates it, and his crimes are the graver the longer he holds his unhappy soul in bondage.[42]

CANON 51

Summary. Clandestine marriages and witness to them by a priest are forbidden. Marriages to be contracted must be published in the churches by the priests so that, if legitimate impediments exist, they may be made known. If doubt exists, let the contemplated marriage be forbidden till the matter is cleared up.

Text. Since the prohibition of the conjugal union in the three last degrees has been revoked, we wish that it be strictly observed in the other degrees. Whence, following in the footsteps of our predecessors, we absolutely forbid clandestine marriages; and we forbid also that a priest presume to witness such. Wherefore, extending to other localities generally the particular custom that prevails in some, we decree that when marriages are to be contracted they must be announced publicly in the churches by the priests during a suitable and fixed time, so that if legitimate impediments exist, they may be made known. Let the priests nevertheless investigate whether any impediments exist. But when there is ground for doubt concerning the contemplated union, let the marriage be expressly forbidden until it is evident from reliable sources what ought to be done in regard to it. But if anyone should presume to contract a clandestine or forbidden marriage of this kind within a prohibited degree, even through ignorance, the children from such a union shall be considered illegitimate, nor shall the ignorance of the parents be pleaded as an extenuating circumstance in their behalf, since they by contracting such marriages appear not as wanting in knowledge but rather as affecting ignorance. In like manner the children shall be considered illegitimate if both parents, knowing that a legitimate impediment exists, presume to contract such a marriage *in conspectu ecclesiae* (not clandestinely) in disregard of every prohibition. The parochial priest who deliberately neglects to forbid such unions,

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42 See I Lateran Council, canon 5.

or any regular priest who presumes to witness them, let them be suspended from office for a period of three years and, if the nature of their offense demands it, let them be punished more severely. On those also who presume to contract such marriages in a lawful degree, a condign punishment is to be imposed. If anyone maliciously presents an impediment for the purpose of frustrating a legitimate marriage, let him not escape ecclesiastical punishment.

CANON 52

Summary. In the matter of consanguinity and affinity, hearsay evidence is not to be relied on unless it comes from reputable persons to whom uprightness is a precious asset.

Text. Through some necessity the common mode of procedure in computing the degree of consanguinity and affinity has been re placed by another, namely, hearsay testimony, since on account of the shortness of human life eye-witnesses cannot be had in the matter of reckoning to the seventh degree. But, since we have learned from many instances and from experience that, in consequence of this, legitimate marriages are beset with many dangers, we decree that in this matter hearsay witnesses be not received in the future, since the prohibition now does not extend beyond the fourth degree, unless they be reputable persons to whom uprightness is a precious asset and who before the dispute arose obtained their testimony from those gone immediately before, not from one indeed, since he would not suffice if he were living, but from two at least, who must have been reliable persons, beyond suspicion and of good faith, since it would be absurd to admit them if their informants were worthy only of rejection. Not even if one person has obtained his testimony from many, or if an unreliable person has obtained his from men of good faith, must they be admitted as many and suitable witnesses, since even in the ordinary judicial processes the statement of one witness does not suffice, even though he shine in all the splendor of gubernatorial dignity, and, moreover, legitimate acts are denied to persons of a disreputable character. Witnesses of this kind must declare on oath that in giving their testimony they are not actuated by hatred, fear, love, or self-interest; let them designate persons by their names or by a satisfactory description or circumlocution, and distinguish by a clear computation each degree on both sides, and let them include in their oath that they obtained their information from their forefathers and believe it to be so. But neither do such witnesses suffice unless they declare on oath that they have seen persons who belonged to at least one of the aforesaid degrees and who acknowledged themselves blood relatives. For it is more tolerable that some

who have been united contrary to the laws of men be separated than that those who have been legitimately united separate in violation of the laws of God.

CANON 53

Summary. Owners who commit their estates to people that pursuant of their rites do not pay tithes, must be compelled to pay them in full.

Text. In some localities there dwell people who according to their rites are not accustomed to pay tithes, though they are considered Christians.[43] To these some owners entrust the cultivation of their estates, in order to defraud the churches of tithes and thus realize greater profits. Wishing, therefore, to safeguard the churches against loss in this matter, we decree that the owners may entrust to such people and in such a manner the cultivation of their estates, but they must without argument pay to the churches the tithes in full, and to this let them be compelled, if necessary, by ecclesiastical censure. All tithes due by reason of the divine law or by reason of an approved local custom must be paid.

CANON 54

Summary. The payment of tithes takes precedence over the payment of taxes and other expenses, and those who invert this order are to be punished.

Text. Since it is not in the power of man that the seed yield a return to the sower, because according to the words of the Apostle, "Neither he that planteth is anything, nor he that watereth; but God who giveth the increase" (I Cor. 3: 7), the decayed seed producing much fruit, some impelled too much by avarice strive to defraud in the matter of tithes, deducting from the profits and first fruits taxes and other expenses on which at times they thus escape the payment of tithes. But since the Lord, as a sign of His universal dominion, formerly reserved tithes to Himself by a special title, we, wishing to safeguard the churches against loss and souls against danger, decree that by the prerogative of general dominion the payment of tithes precedes the payment of taxes and other expenses, or at least they to whom the taxes and other expenses are paid but from which the tithes have not been deducted, should be compelled by ecclesiastical censure to pay the tithes to the churches to which they are legally due, since the obligation that attaches to a thing passes with the thing from one possessor to another.

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[43] Greeks, Armenians, and other Oriental people among whom at this period the payment of tithes had been abolished.

CANON 55

Summary. The Cistercians and other monks must pay tithes to the churches from strange lands or from lands they may acquire in the future, even if they cultivate them with their own hands.

Text. Lately the abbots of the Cistercian order in general chapter assembled wisely decided in reference to our warning, that in the future the brethren of that order purchase no property on which tithes are due to the churches, unless it be for the purpose of establishing new monasteries. And if such possessions have been given to them through the pious generosity of the faithful or bought for them for the purpose of founding new monasteries, they may commit their cultivation to others by whom the tithes will be paid to the churches, lest by reason of their privileges the churches be further oppressed. We decree, therefore, that from strange lands or from lands that they may acquire in the future, though they cultivate them with their own hands or at their own expense, they pay the tithes to the churches to which they were formerly paid, unless they make some other arrangement with those churches. We therefore, holding this decree acceptable and accepted, wish it to be extended also to other regulars who enjoy similar privileges, and we ordain that the prelates of the churches be more willing and energetic in punishing evil doers and strive to observe their privileges better and more perfectly.[44]

CANON 56

Summary. It is forbidden to make contracts prejudicial to parochial churches.

Text. Many regular and secular clerics, we understand, when sometimes they lease houses or grant fiefs, make a contract prejudicial to parochial churches, namely, that the administrator or feudal tenants pay the tithes to them and choose burial among them. But, since this is prompted by avarice, we absolutely condemn a contract

[44] By the common law monks as well as laymen were obliged to pay tithes from the fruits of their estates. This was the ancient discipline of the Church. The first who absolved monks from the obligation of paying tithes from their landed possessions seems to have been Gregory VII. Later, Paschal II exempted monks and canons regular from the payment of tithes from lands that they cultivated with their own hands. This privilege of Paschal was granted primarily in favor of the Cistercian Order, which in its beginnings was very poor. When later the order became immensely wealthy, especially in landed possessions, this privilege became the fruitful source of conflict between the Cistercian Order and the bishops. Hence it was enacted in this decree that from all strange lands and lands that may be acquired in the future, even if cultivated with their own hands or at their own expense, the Cistercians as well as other regulars who enjoy similar privileges, must pay tithes to the churches to which they were formerly paid or make some other arrangement with those churches. Thomassin, *Vetus et nova ecclesiae disciplina*, P. III, lib. I, cap. 9.

of this kind and declare that whatever has been received by means of such a contract must be returned to the parochial church.

CANON 57

Summary. Only members of a religious order and those who have given their possessions to the order, retaining for themselves only the usufruct, may be buried during the period of an interdict. To religious coming to an interdicted locality, only one church may be opened, and that merely once a year.

Text. That the privileges which the Roman Church has granted to some religious may be maintained in their entirety, we take occasion to make clear some things in regard to them, lest being misunderstood they lead to abuse, by reason of which they may be rightly revoked, because he deserves to lose privileges who abuses the benefits which they confer. The Apostolic See has granted permission to some regulars that to those who have become members of their order, ecclesiastical burial may not be denied if the churches to which they belong should be under interdict, provided they themselves are not excommunicated or nominally interdicted; and they may, therefore, take their brethren, whom the prelates of the churches are not permitted to bury from their churches, to their own churches for burial, if they (the deceased confrères) were not nominally under excommunication or interdict. By brethren we understand both those who, having lived in the world, gave themselves to their order and accepted its habit, and those who gave their possessions to the order, retaining for their own maintenance during life only the usufruct, who, however, may be buried from non-interdicted churches of regulars or others in which they may choose to be buried; it is not, however, to be understood of those who join their fraternity and contribute annually no more than two or three denarii, for this would upset ecclesiastical order and discipline. Yet these also obtain a certain remission granted to them by the Apostolic See.

That other privilege also that has been granted to some regulars, namely, that when any of their brethren who have been sent by them to collect (alms), arrive in any city, fortified town, or village, if perchance that place be under interdict, in view of their joyful arrival the churches may be opened once a year for the celebration of the divine offices for those not under excommunication, we wish to be understood thus: that in each city, fortified town, or village, only one church of the same order may, as has been said, be opened to the brethren once a year; for though the statement, that on their joyful arrival the churches may be opened, is plural, yet it is not to be understood as referring to the churches of the same place separately, but to the churches of the aforesaid places collectively; otherwise, if they should visit each church of the same place, the

interdict would be too much disregarded. Whoever shall presume to act contrary to these enactments, let him be subject to severe penalties.[45]

CANON 58

Summary. During a general interdict the bishops may within closed doors celebrate the divine services for those not affected by the interdict.

Text. The privilege that has been granted to some religious we concede also to bishops, that, when the entire territory is under interdict, those excommunicated and interdicted being excluded, they may sometimes with the doors closed, in a low voice and without the ringing of bells, celebrate the divine offices, unless this is expressly covered by the interdict. But we grant this to those only who in no way shared in the cause of the interdict or injected treachery or fraud, drawing out such a brief period to iniquitous loss.

CANON 59

Summary. Religious are forbidden to go security for or to borrow money from anyone beyond a fixed sum without the consent of the abbot or the greater part of the chapter.

Text. What has been forbidden by the Apostolic See to some religious orders, we wish and command to be extended to all, namely, that no religious may, without the permission of the abbot and of the greater part of his chapter, go security for anyone or borrow money from anyone beyond an amount fixed by common agreement; otherwise the convent is not held in any degree responsible for such things, unless perchance it is evident that his action would redound to the advantage of the convent. Anyone who presumes to act contrary to this, let him be subject to severe discipline.

CANON 60

Summary. Abbots are forbidden to interfere in matters that belong to the jurisdiction of the bishops.

Text. From different parts of the world complaints of bishops come to us in regard to grave excesses of some abbots, who, not content within their own spheres, extend their hands to those things that concern the episcopal office, deciding matrimonial cases, imposing public penances, granting letters of indulgences, and similar things, whence it sometimes happens that the episcopal authority is looked upon by many as something of trifling importance. Wishing,

[45] Cf. III Lateran Council, canon 9.

therefore, in these matters to safeguard the dignity of the bishops and the welfare of the abbots, we absolutely forbid in the present decree that abbots presume to overreach themselves in such matters if they wish to escape canonical penalties, unless they can by a special concession or other legitimate reason defend themselves in matters of this kind.

CANON 61

Summary. Religious are forbidden to receive churches and tithes from laymen without the consent of the bishops. In churches that do not belong to them *pleno jure*, the priests must be appointed by the bishops on presentation.

Text. In the Lateran Council regulars were forbidden to receive churches and tithes from the hands of laymen without the consent of the bishops, and under no circumstances to admit *ad divina* those excommunicated or nominally under interdict.[46] Wishing to curb this evil more effectively and provide that transgressors meet with condign punishment, we decree that in churches that do not *pleno jure* belong to them, they present to the bishops priests to be appointed in accordance with the statutes of that council, that they may be responsible to them in those things that pertain to the *cura animarum;* in temporal affairs, however, let them render a satisfactory account to the monasteries. Those who have been appointed, let them not dare remove without the approval of the bishops. We add, moreover, that care be taken to present such priests as are known for their uprightness and ability or whom the probable testimony of the bishops recommends.

CANON 62

Summary. Relics are not to be sold or put on exhibition, lest the people be deceived in regard to them. Seekers of alms are not to be admitted unless they can exhibit letters of the Apostolic See or of the bishops, and they may not preach anything not contained in the letters. On the occasion of the dedication of a church, an indulgence of not more than one year may be granted; on the anniversary of the dedication, it may not exceed forty days.

Text. From the fact that some expose for sale and exhibit promiscuously the relics of saints, great injury is sustained by the Christian religion. That this may not occur hereafter, we ordain in the present decree that in the future old relics may not be exhibited outside of a vessel or exposed for sale. And let no one presume to venerate publicly new ones unless they have been approved by the Roman pontiff. In the future prelates shall not permit those who come to their churches *causa venerationis* to be deceived by worthless fabrications or false documents as has been done in many

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[46] *Ibid.*, canon 9.

places for the sake of gain. We forbid also that seekers (*quaestores*) of alms, some of whom, misrepresenting themselves, preach certain abuses, be admitted, unless they exhibit genuine letters either of the Apostolic See or of the diocesan bishop, in which case they may not preach anything to the people but what is contained in those letters. We give herewith a form which the Apostolic See commonly uses in granting such letters, that the diocesan bishops may model their own upon it. The following is the form:

Forma litterarum praedicatorum

Quoniam, ut ait Apostolus, omnes stabimus ante tribunal Christi, recepturi prout in corpore gessimus, sive bonum sive malum fuerit, oportet nos diem messionis extremae misericordiae operibus praevenire, ac aeternorum intuitu seminare in terris quod reddente Domino cum multiplicato fructu colligere debeamus in caelis; firmam spem, fiduciamque tenentes, quoniam "qui parce seminat, parce et metet, et qui seminat in benedictionibus, de benedictionibus et metet in vitam aeternam." Cum igitur ad sustentationem fratrum et egenorum ad tale confluentium hospitale propriae non suppetant facultates, universitatem vestram monemus et exhortamur in Domino atque in remissionem vobis injungimus peccatorum, quatenus de bonis a Deo vobis collatis pias eleemosynas et grata eis caritatis subsidia erogatis, ut per subventionem vestram ipsorum inopiae consulatur, et vos per haec et per alia bona, quae Domino inspirante feceritis, ad aeterna possitis gaudia pervenire.

Those who are assigned to collect alms must be upright and discreet, must not seek lodging for the night in taverns or in other unbecoming places, nor make useless and extravagant expenses, and must avoid absolutely the wearing of the habit of a false religious.

Since, through indiscreet and superfluous indulgences which some prelates of churches do not hesitate to grant, contempt is brought on the keys of the Church, and the penitential discipline is weakened, we decree that on the occasion of the dedication of a church an indulgence of not more than one year be granted, whether it be dedicated by one bishop only or by many, and on the anniversary of the dedication the remission granted for penances enjoined is not to exceed forty days. We command also that in each case this number of days be made the rule in issuing letters of indulgences which are granted from time to time, since the Roman pontiff who possesses the plenitude of power customarily observes this rule in such matters.[47]

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[47] Schroeder, "The Church and the Abuse of Indulgences in the Middle Ages," in *Am. Cath. Quarterly Review*, XLVI (1921), 177-205.

CANON 63

Summary. It is simoniacal to demand something for the consecration of bishops, the blessing of abbots, and the ordination of clerics; nor is custom any excuse.

Text. We have learned with certainty that in many places and by many persons exactions and base extortions are made for the consecration of bishops, the blessing of abbots, and the ordination of clerics, and that a tax is fixed as to how much this one or that one is to receive and how much this one or that one is to pay; and what is worse, some endeavor to defend such baseness and depravity by an appeal to a custom of long standing. Therefore, wishing to abolish such abuse, we absolutely condemn a custom of this kind, which ought rather to be called corruption, firmly decreeing that neither for those conferring nor for the things conferred shall anyone presume to demand or to extort something under any pretext whatsoever. Otherwise both he that has received and he that has given a price of this kind, shall share the condemnation of Giezi and Simon.[48]

CANON 64

Summary. Religious are not to be received for a price. If this happens, both the one receiving and the one received shall, without hope of restoration, be removed from the community. Those who were received in such a manner before the publication of this decree, must be placed in other communities of the same order.

Text. Since the stain of simony has so infected many nuns that scarcely any are received into the community without a price, doing this on the plea of poverty to conceal that evil, we strictly forbid that this be done in the future, decreeing that whoever in the future shall be guilty of such irregularity, both the one receiving and the one received, whether subject or superioress, shall, without hope of restoration, be removed from their monastery to one of stricter observance to do penance for the remainder of their life. Those nuns, however, who have been so received before the publication of this decree, are to be removed from the monasteries which they entered in a wrong manner and placed in others of the same order. But if on account of lack of room they cannot perchance be conveniently placed elsewhere, lest they should to their own loss become wanderers in the world, let them be received anew *per modum dispensationis* in the same monastery, and from the priority of places which they held in the community let them be assigned to lower ones. This we decree is to be observed also with regard to monks and other regulars. But, lest they should attempt to excuse themselves on grounds of simplicity or ignorance, we command the

[48] See IV Kings 5: 20–27, and Acts 8: 9–24.

bishops to see to it that this decree is published every year throughout their dioceses.[49]

CANON 65

Summary. Bishops are not to demand anything for the appointment of pastors. Entrance into a monastery and burial must be free.

Text. We have heard it said of some bishops that on the death of rectors of churches they place the churches under interdict and will not allow any persons to be appointed to the vacancies till a certain sum of money has been paid them. Moreover, when a soldier or cleric enters a monastery or chooses to be buried among religious, though he has left nothing to the religious institution, difficulties and villainy are forced into service till something in the nature of a gift comes into their hands. Since, therefore, according to the Apostle we must abstain not only from evil but also from every appearance of evil, we absolutely forbid exactions of this kind. If any transgressor be found, let him restore double the amount exacted; this is to be placed faithfully at the disposal of those localities to whose detriment the exactions were made.

CANON 66

Summary. The sacraments must be administered freely. The bishops should exhort the people to retain pious customs.

Text. It has frequently come to the ears of the Apostolic See that some clerics demand and extort money for burials, nuptial blessings, and similar things, and, if perchance their cupidity is not given satisfaction, they fraudulently interpose fictitious impediments. On the other hand, some laymen, under the pretext of piety but really on heretical grounds, strive to suppress a laudable custom introduced by the pious devotion of the faithful in behalf of the church (that is, of giving freely something for ecclesiastical services rendered). Wherefore, we forbid that such evil exactions be made in these matters, and on the other hand command that pious customs be observed, decreeing that the sacraments of the Church be administered freely and that those who endeavor maliciously to change a laudable custom be restrained by the bishops of the locality when once the truth is known.

CANON 67

Summary. Jews should be compelled to make satisfaction for the tithes and offerings due to the churches, which the Christians supplied before their properties fell into the hands of the Jews.

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[49] Kober, *Die Suspension*, 357 ff.

Text. The more the Christians are restrained from the practice of usury, the more are they oppressed in this matter by the treachery of the Jews, so that in a short time they exhaust the resources of the Christians. Wishing, therefore, in this matter to protect the Christians against cruel oppression by the Jews, we ordain in this decree that if in the future under any pretext Jews extort from Christians oppressive and immoderate interest, the partnership of the Christians shall be denied them till they have made suitable satisfaction for their excesses. The Christians also, every appeal being set aside, shall, if necessary, be compelled by ecclesiastical censure to abstain from all commercial intercourse with them. We command the princes not to be hostile to the Christians on this account, but rather to strive to hinder the Jews from practicing such excesses. Lastly, we decree that the Jews be compelled by the same punishment (avoidance of commercial intercourse) to make satisfaction for the tithes and offerings due to the churches, which the Christians were accustomed to supply from their houses and other possessions before these properties, under whatever title, fell into the hands of the Jews, that thus the churches may be safeguarded against loss.

CANON 68

Summary. Jews and Saracens of both sexes in every Christian province must be distinguished from the Christians by a difference of dress. On Passion Sunday and the last three days of Holy Week they may not appear in public.

Text. In some provinces a difference of dress distinguishes the Jews and Saracens from the Christians, but in others confusion has developed to such a degree that no difference is discernible. Whence it happens sometimes through error that Christians mingle with the women of Jews and Saracens, and, on the other hand, Jews and Saracens mingle with those of the Christians. Therefore, that such ruinous commingling through error of this kind may not serve as a refuge for further excuse for excesses, we decree that such people of both sexes (that is, Jews and Saracens) in every Christian province and at all times be distinguished in public from other people by a difference of dress, since this was also enjoined on them by Moses. On the days of the Lamentations and on Passion Sunday they may not appear in public, because some of them, as we understand, on those days are not ashamed to show themselves more ornately attired and do not fear to amuse themselves at the expense of the Christians, who in memory of the sacred passion go about attired in robes of mourning. That we most strictly forbid, lest they should presume in some measure to burst forth suddenly in contempt of the Redeemer. And, since we ought not to be ashamed of Him who blotted out our offenses, we command that the secular princes re-

strain presumptuous persons of this kind by condign punishment, lest they presume to blaspheme in some degree the One crucified for us.[50]

CANON 69

Summary. Jews are not to be given public offices. Anyone instrumental in doing this is to be punished. A Jewish official is to be denied all intercourse with Christians.

Text. Since it is absurd that a blasphemer of Christ exercise authority over Christians, we on account of the boldness of transgressors renew in this general council what the Synod of Toledo (589) wisely enacted in this matter, prohibiting Jews from being given preference in the matter of public offices, since in such capacity they are most troublesome to the Christians. But if anyone should commit such an office to them, let him, after previous warning, be restrained by such punishment as seems proper by the provincial synod which we command to be celebrated every year. The official, however, shall be denied the commercial and other intercourse of the Christians, till in the judgment of the bishop all that he acquired from the Christians from the time he assumed office be restored for the needs of the Christian poor, and the office that he irreverently assumed let him lose with shame. The same we extend also to pagans.[51]

CANON 70

Summary. Jews who have received baptism are to be restrained by the prelates from returning to their former rite.

Text. Some (Jews), we understand, who voluntarily approached the waters of holy baptism, do not entirely cast off the old man that they may more perfectly put on the new one, because, retaining remnants of the former rite, they obscure by such a mixture the

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[50] In 581 the Synod of Macon enacted in canon 14 that from Thursday in Holy Week till Easter Sunday, Jews may not in accordance with a decision of King Childebert appear in the streets and in public places. Mansi, IX, 934; Hefele-Leclercq, III, 204. In 1227 the Synod of Narbonne in canon 3 ruled: "That Jews may be distinguished from others, we decree and emphatically command that in the center of the breast (of their garments) they shall wear an oval badge, the measure of one finger in width and one half a palm in height. We forbid them, moreover, to work publicly on Sundays and on festivals. And lest they scandalize Christians or be scandalized by Christians, we wish and ordain that during Holy Week they shall not leave their houses at all except in case of urgent necessity, and the prelates shall during that week especially have them guarded from vexation by the Christians." Mansi, XXIII, 22; Hefele-Leclercq, V, 1453. Many decrees similar to these in content were issued by synods before and after this Lateran Council. Hefele-Leclercq, V and VI; Grayzel, *The Church and the Jews in the XIIIth Century*, Philadelphia, 1933.

[51] Mansi, IX, 995; Hefele-Leclercq, III, 227. This canon 14 of Toledo was frequently renewed.

beauty of the Christian religion. But since it is written: "Accursed is the man that goeth on the two ways" (Ecclus. 2: 14), and "a garment that is woven together of woolen and linen" (Deut. 22: 11) ought not to be put on, we decree that such persons be in every way restrained by the prelates from the observance of the former rite, that, having given themselves of their own free will to the Christian religion, salutary coercive action may preserve them in its observance, since not to know the way of the Lord is a lesser evil than to retrace one's steps after it is known.

Summary. A series of decrees dealing with the preparation of a crusade to the Holy Land.

Text. Desiring with an ardent desire to liberate the Holy Land from the hands of the ungodly, we decree with the advice of prudent men who are fully familiar with the circumstances of the times, and with the approval of the council, that all who have taken the cross and have decided to cross the sea, hold themselves so prepared that they may, on June 1 of the year after next (1217), come together in the Kingdom of Sicily, some at Brundusium and others at Messana, where, God willing, we (the Pope) will be present personally to order and to bestow on the Christian army the divine and Apostolic blessing. Those who decide to make the journey by land, should strive to hold themselves prepared for the same time; for their aid and guidance we shall in the meantime appoint a competent legate *a latere*. Priests and other clerics who are with the Christian army, subjects as well as prelates, must be diligent in prayer and exhortation, teaching them (the crusaders) by word and example that they have always before their eyes the fear and love of God, lest they say or do something that might offend the majesty of the eternal King. And should any have fallen into sin, let them quickly rise again through true repentance, practicing humility both interiorly and exteriorly, observing moderation in food as well as in clothing, avoiding dissensions and emulations, and divesting themselves of all malice and ill will, that being thus fortified with spiritual and material arms, they may fight with greater success against the enemies of the faith, not indeed relying on their own strength but putting their trust in the power of God. To the clerics we grant for a period of three years as complete an enjoyment of their benefices as if they actually resided in them, and they may, if necessary, even give them as pledges during this time. Therefore, that this undertaking may not be impeded or retarded, we strictly command all prelates that each one in his own territory induce those who have laid aside the crusader's cross to resume it, and carefully to admonish them and others who have taken the cross, as well as those who happen to be engaged for this purpose, to renew their vows to God, and if neces-

sary to compel them by excommunication and interdict to abandon all delay.

Moreover, that nothing connected with the affairs of our Lord Jesus Christ be omitted, we wish and command that patriarchs, archbishops, bishops, abbots, and others who have the care of souls, diligently explain the meaning of the crusade to those committed to them, adjuring—through the Father, Son, and Holy Ghost, one, only true, and eternal God—kings, dukes, princes, marquises, counts, barons, and other prominent men, as well as cities, villages, and towns, that those who cannot go personally to the Holy Land, will furnish a suitable number of soldiers and, for a period of three years, in proportion to their resources, will bear the necessary expenses connected therewith for the remission of their sins, as we have made known in the general letters already sent over the world and as will be expressed in greater detail below. In this remission we wish not only those to participate who for this purpose furnish their own ships, but those also who undertake to build ships. To those declining to render aid, if perchance any should be found to be so ungrateful to God, the Apostolic See firmly protests that on the last day they will be held to render an account to us in the presence of a terrible Judge. Let them first consider with what security they can appear in the presence of the only begotten Son of God, Jesus Christ, into whose hands the Father has given all things, if in this matter they refuse to serve Him who was crucified for sinners, by whose favor they live, by whose benefits they are sustained, and by whose blood they were redeemed.

But, lest we should seem to place grave and unbearable burdens on the shoulders of the people, we ourselves (the Pope) donate to the cause what we have been able to save by strict economy, 30,000 pounds, besides a ship to convey the crusaders from Rome and vicinity and 3,000 marks silver, the remnant of alms received from the faithful. The remainder we have given to Albert patriarch of Jerusalem, and to the masters of the Temple and Hospital for the necessities of the Holy Land. With the approval of the council we further decree that absolutely all clerics, subjects as well as superiors, shall, in aid of the Holy Land and for a period of three years, pay into the hands of those appointed by the Apostolic See for this purpose, one-twentieth part of ecclesiastical revenues; some religious orders only being excepted and those (clerics) also who take or already have taken the crusader's cross and are about to set out personally. We and our brethren, the cardinals of the Holy Roman Church, will pay one-tenth of our revenues. All are bound to the faithful observance of this under penalty of excommunication, so that those who deliberately commit fraud in this matter will incur that penalty.

Since by the just judgment of the heavenly King it is only right

that those who are associated with a good cause should enjoy a special privilege, we exempt the crusaders from collections, taxes, and other assessments. Their persons and possessions, after they have taken the cross, we take under the protection of Blessed Peter and our own, decreeing that they stand under the protection of the archbishops, bishops, and all the prelates of the Church. Besides, special protectors will be appointed, and, till their return or till their death shall have been certified, they shall remain unmolested, and if anyone shall presume the contrary, let him be restrained by ecclesiastical censure.

In the case of crusaders who are bound under oath to pay interest, we command that their creditors be compelled to cancel the oath given and to cease exacting interest. Should any creditor force the payment of interest, we command that he be similarly forced to make restitution. We command also that Jews be compelled by the secular power to cancel interest, and, till they have done so, intercourse with them must be absolutely denied them by all Christians under penalty of excommunication. For those who cannot before their departure pay their debts to the Jews, the secular princes shall provide such a delay that from the time of their departure till their return or till their death is known, they shall not be embarrassed with the inconvenience of paying interest. If a Jew has received security (for example, a piece of ground) for such a debt, he must, after deducting his own expenses, pay to the owner the income from such security. Prelates who manifest negligence in obtaining justice for the crusaders and their servants, shall be subject to severe penalty.

Since the corsairs and pirates too vehemently impede assistance to the Holy Land by capturing and robbing those who go there and those returning, we excommunicate them and their principal abetters and protectors, forbidding under threat of anathema that anyone knowingly hold intercourse with them in any contract of buying and selling, and enjoin upon the rulers of cities and their localities that they check and turn them away from this iniquity. And since an unwillingness to disturb the perverse is nothing else than to favor them, and is also an indication of secret association with them on the part of those who do not resist manifest crime, we wish and command that severe ecclesiastical punishment be imposed by the prelates on their persons and lands. We excommunicate and anathematize, moreover, those false and ungodly Christians who furnish the enemies of Christ and the Christian people with arms, iron, and wood for the construction of ships; those also who sell them ships and who in the ships of the Saracens hold the post of pilot, or in any other way give them aid or advice to the detriment of the Holy Land; and we decree that their possessions be confiscated and they themselves become the slaves of their captors. We command that

this sentence be publicly announced in all maritime cities on all Sundays and festival days, and that to such people the church be not opened till they return all that they have obtained in so reprehensible a traffic and give the same amount of their own in aid of the Holy Land. In case they are not able to pay, then let them be punished in other ways, that by their chastisement others may be deterred from undertaking similar pursuits.

Furthermore, under penalty of anathema, we forbid all Christians for a period of four years to send their ships to Oriental countries inhabited by the Saracens, in order that a greater number of ships may be available to those who wish to go to the aid of the Holy Land, and that to the Saracens may be denied the benefits that they usually reap from such commercial intercourse.

Though tournaments have been, under certain penalties, generally forbidden by different councils, since however at this time they are a serious obstacle to the success of the crusade, we strictly prohibit them under penalty of excommunication for a period of three years.

But, since for the success of this undertaking it is above all else necessary that princes and Christian people maintain peace among themselves, we decree with the advice of the holy council that for four years peace be observed in the whole Christian world, so that through the prelates discordant elements may be brought together in the fulness of peace, or at least to the strict observance of the truce. Those who refuse to acquiesce in this, are to be compelled by excommunication and interdict, unless the malice that inspired their wrongdoings was such that they ought not to enjoy such peace. But, if by chance they despise ecclesiastical censure, they have every reason to fear lest by the authority of the Church the secular power will be invoked against them as disturbers of the affairs of the One crucified.

We, therefore, by the mercy of the omnipotent God, trusting in the authority of the Blessed Apostles Peter and Paul, in virtue of that power of binding and loosing which God has conferred on us, though unworthy, grant to all who aid in this work personally and at their own expense, a full remission of their sins [52] which they have sincerely repented and orally confessed, and promise them when the just shall receive their reward an increase of eternal happiness. To those who do not personally go to the Holy Land, but at their own expense send there as many suitable men as their means will permit, and to those also who go personally but at the expense of others, we grant a full remission of their sins. Participants of this remission are, moreover, all who in proportion to their means contribute to the aid of the Holy Land, or in regard to what has been said give opportune advice and assistance. Finally, to all who in a

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[52] That is, a remission of sins *quoad poenam*, not *quoad culpam*.

spirit of piety aid in bringing to a successful issue this holy undertaking, this holy and general council imparts the benefits of its prayers and blessings that they may advance worthily to salvation. Amen.

THE THIRTEENTH GENERAL COUNCIL (1245)

First Council of Lyons

History. The conflict between Frederick II and Innocent IV was one for supremacy. It was a contest between the papacy, then at the height of its power, and the Empire, for the primacy over Europe, or more accurately, for world sovereignty. The Empire, as conceived by Frederick, and the papacy, as conceived by Gregory IX and Innocent IV, because of their conflicting interests could not exist side by side in peace. The popes claimed for themselves the *imperium animarum* and the *principatus rerum et corporum in universo mundo*. Not only should they be the supreme rulers in Italy but, in virtue of their universal spiritual jurisdiction, the papacy should in all things be supreme, that is, should hold the supremacy over the Empire. On the other hand, the aim uppermost in the Emperor's mind was the restoration of the *imperium mundi*, which connoted supreme temporal power, with which the popes should have no right to interfere. In this he was but following in the footsteps of his father, Henry VI, and of his grandfather, Frederick I (Barbarossa). It was an idea that had become part and parcel of the Hohenstaufen policy. The centralization of his power in Italy and his wars upon Lombardy, together with his obsession by the idea that the possession of Italy without the possession of Sicily would always be insecure, and that the king of Italy must at the same time be emperor, naturally brought him into conflict with Gregory IX, because the freedom and independence of the Lombard cities constituted a powerful and necessary defense for the security of the Papal States and, if we consider the geographical location of these States, because the Pope, for the preservation of his liberty, was compelled to frustrate any attempt at uniting southern Italy to the Empire. Frederick's depredations in northern Italy and his threat to unite all Italy to the Empire, convinced the Pope that peace between the papacy and the Empire was out of the question so long as Frederick was emperor, and he sought thenceforth to bring about Frederick's deposition. Gregory made an alliance with the Lombards and on March 20, 1239, excommunicated him for the third time, at the same time releasing his subjects from all allegiance to him. The following day he directed the Archbishop of Milan and his suffragans to publish the sentence in all the churches of their dioceses. In two encyclical letters he made known his action to the world and placed under interdict every locality in

which the Emperor should sojourn. The bull of excommunication was published in Italy, France, England, and Germany. The Pope directed his emissaries in Germany to preach rebellion against the Emperor, urged the election of a new king, and instructed his legate Albert of Behaim, the archdeacon of Passau, to place under the ban all who should continue to side with the Emperor. The crusade in Germany proved a failure, however; despite the anathemas directed against them, many bishops and princes remained loyal to the Emperor, with the result that the Emperor, encouraged by this failure, now set out to break the power of the Pope by taking possession of the papal territory. In this emergency Gregory (August 9, 1240) convoked a general council to meet in Rome the following Easter.[1] Though in the earlier stages of the conflict Frederick himself had proposed such a council, he now left nothing undone to frustrate it. He placed guards at the Alpine passes, on the highways, and at the seaports, with orders to plunder and capture prelates who, contrary to his prohibition, should be on the way to attend the council, while to his bastard son Enzio he committed the task of capturing the Genoese fleet which was carrying bishops and delegates to Rome for the same purpose. During the sea battle several prelates, including the Archbishop of Besançon, were killed; three cardinals and over a hundred bishops and delegates were captured and imprisoned.[2] The Emperor himself proceeded toward Rome and was about to undertake the siege of the city, when Gregory died suddenly at the age of nearly one hundred years (August 22, 1241).

Except for the brief reign of Celestine IV, the Holy See was vacant for a period of nearly eighteen months, during which the Emperor on two occasions marched against Rome, devastating the territory of his opponents, took possession of the ecclesiastical States in the vicinity of Rome, and endeavored to intimidate the cardinals to elect a pope to his own liking. When, on June 25, 1243, Sinibaldo de Fieschi ascended the papal throne as Innocent IV, Frederick manifested great satisfaction at the election, declaring that the new Pope as Cardinal Sinibaldo had always been *verbo et opere benevolus* and *obsequiosus* toward him. But he soon learned to his great disappointment that he had to deal with a pontiff who was as determined as Gregory had been in defending the rights of the Church against the wily, unscrupulous, and guileful tactics of the Hohenstaufens. Innocent wanted peace, but knew from experience that peace was impossible so long as the power of his opponent remained undestroyed. In an agreement made with the Pope (March 31, 1244), Frederick had solemnly promised among other things to restore the States of the Church, to re-

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[1] Potthast, *Regesta Pontif. Roman.*, nos. 10925 ff.

[2] Macaulay, "The Capture of a General Council, 1241," in *English Historical Review* (1891), pp. 1 ff.

lease the prelates whom he had captured while on their way to Rome to attend the general council convoked by Gregory IX, and to grant amnesty to the papal allies. His interpretation of the terms of the agreement showed his insincerity. Through the Frangipani he secretly stirred up tumults in Rome, refused to restore the States of the Church or to release the prelates till he had been freed from the ban. To enforce compliance with his demands, he set about effecting the complete isolation of the Pope, and sought to prevent his escape and to shut off any assistance from the outside by having all highways, bridges, and seaports guarded by soldiers. The Pontiff was moved to energetic decisions by the violence of the Emperor, interference with his own freedom of action and fear for his personal safety. By disguising himself, he slipped through the net that Frederick had fashioned around him, left Italy, and took refuge in Lyons. He arrived there on December 2, 1244, and remained for the following six years. On January 3, 1245, he summoned to Lyons a general council for June 24 of the same year. The subjects for its deliberations, as set forth in the document of convocation, were the following: the conflict between the Church and the Emperor; the invasion of Hungary by the Tatars; and the adoption of suitable measures to aid the Holy Land and the Latin Empire of Constantinople. Among those who attended, besides the cardinals, archbishops, and bishops to the number of about 225, and abbots and heads of religious orders, were Baldwin II (Latin Emperor of Constantinople), Raymond VII (Count of Toulouse), Raymond Berenger IV (Count of Provence), Thaddeus of Suessa (Frederick's ambassador), representatives of Louis IX of France, of the King of England, and other princes. Present were also the Latin patriarchs of Constantinople, Antioch, and Aquileia. From Germany only a few bishops attended, since most of them sided with the Emperor against the Pope, while Hungary, on account of the Tatar invasion and the wretched condition of the country, was not represented at all. In a preliminary conference the Patriarch of Constantinople described his wretched plight. The Greeks, many of whom were his subjects, could not be induced by the Latins to acknowledge the authority of the Pope, and the Saracens had by persecution and conquest so diminished his territory that of his thirty suffragan bishops he had but three left. Thaddeus of Suessa arose to declare that the Emperor had new proposals of peace to offer. He was prepared to restore to the Church all possessions which he had taken from her; to make due satisfaction for all injustices committed; to protect the Church against the Tatars, the Saracens, and other enemies, and to give personal assistance for the protection of the Holy Land and for the strengthening of the Latin Empire in the East. Those are fine promises, replied the Pope, but the Emperor will never fulfil them.

The first formal session of the council opened June 28 in the Cathedral of St. John with the Pope presiding in person. After the *Veni Creator Spiritus* and the customary prayers, Innocent preached his famous sermon on his five sorrows, taking as his text the words (Ps. 93: 19): "According to the multitude of my sorrows in my heart, thy comforts have given joy to my soul." He compared his five sorrows with the five wounds of our Lord. These five sorrows were: (1) the bad conduct of the clergy, the bishops as well as those of the lower grades; (2) the insolence of the Saracens, who had conquered Jerusalem, laid waste the Holy Land, and put to death large numbers of Christians; (3) the territorial conquests by the Greek schismatics through Emperor Batatzes, thus threatening the existence of the Latin Empire; (3) the madness and cruelties of the Tatars and their destruction of Hungary, sparing neither age nor sex; (5) the persecutions of Emperor Frederick, whom at the close of his discourse he accused of heresy, sacrilege, and other excesses. Thaddeus attempted to make excuses for the Emperor and to defend him, but without much success. He requested and obtained a delay of ten days for the arrival of the Emperor.

The second session was held July 5. Frederick's machinations and plots against the Church formed the topic of the discussions, and in the end many prelates demanded drastic action against the incorrigible tyrant. Thaddeus again spoke in his behalf and asked for further delay, declaring that his master was on his way to Lyons and would appear in a few days, knowing all the time that the Emperor was in Verona and had no intention of coming to Lyons. Up to this time Frederick had not yet restored the States of the Church nor had he released the imprisoned prelates. At any rate, at the request of the English and French representatives and against the wish of many bishops, Innocent deferred the next and last session till July 17. It was held on the day appointed. After relating his efforts to maintain peace, the Pope accused the Emperor of perjuries, sacrileges, suspicions of heresy, and many cruelties toward the clergy and people. He again excommunicated him and pronounced his deposition, which was signed by the majority of the bishops. He released the Emperor's subjects from their allegiance to him and threatened with the ban all who should continue to recognize or serve him as king or emperor. In conclusion, he authorized all competent electors to choose a new king for Germany, declaring at the same time that the Holy See would take care of Sicily.

Among other things, the council directed that henceforth the octave of the Nativity of the Blessed Virgin be celebrated [8] and that cardinals wear a red hat; it also issued a number of disciplinary measures for the correction

[8] The octave had already been instituted but was not always observed. Mansi, XXIII, 675.

of current abuses and for the extension of aid to the Holy Land, to Hungary, and to the Latin Empire of Constantinople.[4]

CANON 1

Summary. By the clause *quidam alii,* only four persons may be brought before a court, whose names must be indicated in the first summons.

Text. Since in matters of law indefiniteness is to be avoided, we decree that on the ground of that general expression, *quidam alii,* which is frequently inserted in our letters, no more than three or four persons may be brought before a court of justice, whose names must be indicated in the first summons by him who desires their presence, lest the way be opened to fraud if he be permitted to change such names at will.

Comment. In papal rescripts conveying delegated authority, these words are sometimes placed in the narrative: *Pius episcopus servus servorum Dei. . . . Conquestus est nobis talis, quod talis Caius et quidam alii super tali re ei injuriantur. Mandamus, quatenus vocatis vocandis, quod justum fuerit decernas.* Sometimes the same expression is placed not only in the *parte narrativa* but also in the *parte dispositiva,* thus: *Pius episcopus servus servorum Dei. . . . Conquestus est nobis talis, quod talis Caius et quidam alii sibi injuriantur. . . . Mandamus quatenus dictum Caium ad praesentiam tuam convoces et alios quos dictus talis tibi duxerit nominandos.* Evidently anyone obtaining from the Apostolic See against another a rescript in the above forms, can in virtue of that rescript bring before the delegated judge not only the person expressly named but also as many others as he wishes, because the expressions *quidam alii* and *alios quos* are very indefinite. The decree therefore provides that whenever those expressions are inserted in a papal rescript, they are not to be extended beyond three or four persons. Moreover, the one desiring the presence of certain persons must give their names in the first summons, otherwise occasion might be given for the practice of fraud. The decree, of course, has in view papal rescripts only. It was designed to safeguard the jurisdiction of the bishops, who naturally

[4] Mansi, XXIII, 605 ff.; Hefele-Leclercq, *Histoire des Conciles,* V, 1612–77; Hergenröther, *Handbuch d. allg. Kirchengeschichte,* II, 5th ed., 576–93; Frantz, *Der grosse Kampf zwischen Kaisertum u. Papsttum zur Zeit d. Hohenstaufers Friedrich II,* Berlin, 1903; Knebel, *Kaiser Friedrich II u. Papst Honorius III in ihren gegenseitigen Beziehungen (1220–27),* Münster, 1905; Weber, *Der Kampf zwischen Papst Innozenz IV u. Friedrich II bis zur Flucht d. Papstes nach Lyon,* Berlin, 1900; Folz, *Kaiser Friedrich II u. Papst Innozenz IV. Ihr Kampf in den Jahren 1244 u. 1245,* Strassburg, 1905; Fehling, *Kaiser Friedrich II u. die römischen Kardinäle in den Jahren 1227–1239,* Berlin, 1901; Deslandres, *Innocent IV et la chute des Hohenstaufen,* Paris, 1907.

could not know the causes or legal entanglements of their subjects when so many of them were drawn before the tribunal of delegated judges.

CANON 2

Summary. Legal matters may be committed only to persons of high rank, and must be assigned only to localities where an adequate number of skilled jurists can be had.

***Text.* We ordain in the present decree that the Apostolic See and those delegated by it may not commit legal affairs (*causae*) to anyone except persons who are invested with high rank or who are attached to cathedrals or prominent collegiate churches. Matters of this kind, moreover, they must assign only to localities where an adequate number of skilled jurists can be had. Judges who contrary to this decree should cite one or both of the parties to another place, may be disobeyed with impunity, unless both parties have previously agreed to it.**

Comment. By the law of the Decretals no special qualifications were required for judges delegated by the Apostolic See. By that law even simple clerics could be and often were so delegated. This, however, proved derogatory to the Apostolic See and to the ordinaries, because those delegated, often forgetting that their authority was only a delegated one, sometimes exceeded it and pretended to be superior to the Apostolic See and to the bishops. Hence this decree rules that causes may be committed only to clerics invested with high rank or to those attached to cathedrals or important collegiate churches.[5] New vigor was added to this decree by Boniface VIII in his constitution *Statutum* (c. 11, VI°, De rescriptis, I, 3). For the Tridentine legislation on this point, cf. *Sess. XXV, c. 10 de ref.*

CANON 3

Summary. Conditional, alternative, and uncertain votes are void and for this time pass over to the others.

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[5] Collegiate churches were those modeled after cathedral churches. From early times the custom obtained that the bishop and the clergy attached to the cathedral occupied a common dwelling and lived the common life. To this mode of life St. Augustine gave a more perfect form, which his own clerics when they became bishops introduced into their own Churches. In Western Europe a powerful impulse to community life among the secular clergy was given by St. Chrodegang (d. 766) when he became bishop of Metz. He introduced the community life for the clergy of his cathedral and wrote a special rule for them. Gradually this rule and mode of life were adopted by other bishops. Later they were adopted also by larger and more important non-episcopal churches, which were known as collegiate churches. We may add that from this rule or canon of St. Chrodegang the cathedral clergy derived their name of canons. Hence the distinction between cathedral canons and canons of collegiate churches.

Text. **In elections and postulations, and in ballotings for the purpose of an election, we absolutely condemn conditional, alternative, and uncertain votes; decreeing that, since such votes are null, the election be held by those who vote absolutely and definitely, *voce illorum qui non pure consenserint, ea vice in alios recidente,* that is, the right of those to vote who do not do so unconditionally and definitely, inasmuch as their votes do not count, for this time passes over to the others.**

CANON 4

Summary. Conservators must defend against manifest injury, but they may not make judicial inquiries.

Text. **We decree that the conservators whom we frequently appoint, must defend against manifest injury and violence those whose defense we have committed to them, but they may not extend their authority to matters that pertain to a judicial process.**

Comment. Conservators were judges delegated by the pope to defend against notorious injury and violence, but without recourse to a judicial process, certain classes of persons, chief among them being the religious orders. Being exempt from episcopal jurisdiction and subject immediately to the Holy See, *ne acephali maneant,* the regulars incurred in no small measure the displeasure of the bishops, whose ill feeling toward them frequently found expression in violence and various species of oppression. A national synod held in Würzburg (1287) in canon 39 has these words: *Conservatores qui personis religiosis et monasteriis maxime dari consueverunt exemtis per Summum Pontificem aut legatos ejus missos a latere. . . .*[6] Other classes of persons for whose protection they were appointed were universities, chapters, the poor, the widows, and orphans.[7]

CANON 5

Summary. A delegated judge with no special authority cannot compel either party to appear personally before him except for a reasonable cause.

Text. **According to the law there seems to be no doubt that a delegated judge, who in this matter has not received special authority from the Apostolic See, cannot compel either of the parties to appear before him personally in court, unless the cause be a criminal one, or if the giving of evidence or the taking of the oath of calumny**

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[6] Mansi, XXIV, 866.

[7] Cf. cc.1, 15, VI°, De off. et pot. jud. del., I, 14. Council of Trent, *Sess. XIV, c.5 de ref.*

(*juramentum calumniae*) necessitates the personal presence of the parties before him.

CANON 6

Summary. A peremptory exception does not impede the contestation, unless it concerns a matter already adjudicated.

Text. A peremptory exception, or any major defense touching the trial of a cause, raised before the contestation of the cause, does not make void or defer the contestation, unless the exception be that of a finally adjudicated cause or of a compromise, even though the one who raises the objection (the defendant) claims that the rescript would not have been granted had the delegant been made aware of the things which are adverse to the plaintiff.

CANON 7

Summary. A plaintiff shall be condemned to pay the expenses and shall not be granted another citation, if he fails to appear at the time appointed.

Text. A plaintiff who does not appear at the time for which he made arrangement for the citation of his opponent, shall be condemned to pay to the defendant answering the citation all the expenses incurred on account of such non-appearance, and he is not to be granted another citation unless he provides a satisfactory pledge to assure his appearance at the time agreed upon.

CANON 8

Summary. If anyone seeks letters to bring several personal actions against another before different judges, such letters are invalid, and he shall be condemned to pay the expenses.

Text. Wishing to restrict as much as possible the expenses connected with judicial trials, and amplifying the statute of Gregory IX of happy memory,[8] edited in reference to this matter, we decree that if anyone wishes to bring several personal actions against another, he must obtain letters to have all such actions prosecuted before the same judge and not before different ones. Anyone who acts contrary to this vitiates not only the letters but also the process instituted by means of them, and he shall be condemned to pay to the defendant all the legitimate expenses if through such letters he has caused him inconvenience or damage. The defendant also, if during the same trial, using the privilege of reconvention, or, if he should prefer to ask for letters against him, of convention, should say that he like-

[8] Some editions read: Innocentii papae III.

wise has a charge against the plaintiff, must seek his rights before the same judges, unless he is able to refuse them on account of their being suspected. Should he act contrariwise, he must undergo the same penalty as was prescribed above for the plaintiff.

CANON 9

Summary. In case of an ecclesiastical benefice, possession may not be taken because of the absence of the defendant; but let the matter be adjusted without the *litis contestatio.*

Text. We decree that he who in order to obtain a dignity, *personatus,*[9] or ecclesiastical benefice, enters into litigation with the incumbent, is not to be admitted to its possession because of the incumbent's non-appearance at the trial *causa rei servandae,* lest by such action the acquisition of any of the aforesaid offices appear irregular; but in such a case the divine presence taking the place of the absent party, it is permissible, also without the *litis contestatio* and after a careful examination of the matter, to terminate it in the proper way.

CANON 10

Summary. Negative assertions may be admitted if it is deemed expedient.

Text. We decree that judges may admit negative assertions (*positiones*) which cannot be proved except by a confession of the opponent, if for the sake of justice it should appear expedient.

CANON 11

Summary. A judge against whom suspicion has been raised must set a fixed time within which the arbitrators must come to a decision, otherwise he himself shall decide the main issue.

Text. When a legitimate cause of suspicion has been lodged against a judge, and the arbitrators have been chosen by the parties in accordance with the law, it often happens that the former disagreeing among themselves and unwilling to choose a third, with whom both or one of them may proceed to a decision of the matter as they are bound, the judge pronounces the sentence of excommunication against them, which they on account of hatred and of party favor for a long time disregard. The result is that the cause is thus unduly delayed, since no steps are taken toward a settlement of it.

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[9] *Dignitas* implies administration of ecclesiastical affairs with jurisdiction, while *personatus* is an ecclesiastical dignity without jurisdiction. Often, however, these two terms are used interchangeably.

Wishing therefore to provide a necessary remedy for a disorder of this kind, we decree that the judge appoint a fixed time within which the arbitrators agree or by agreement choose a third party with whom both or one of them may decide the matter of this suspicion. Otherwise the judge himself shall proceed to decide the main subject in dispute.

CANON 12

Summary. An excommunication imposed on one who by speech or otherwise holds intercourse with one excommunicated does not bind unless preceded by a canonical admonition.

Text. We decree that no judge shall presume to excommunicate (*excommunicatione majori*) without a previous canonical admonition anyone who, either by speech or in other ways by which such a one incurs minor excommunication, holds intercourse with those excommunicated by him; those decrees remaining in force which have been legitimately promulgated against those who presume to take part *in crimine damnato.* But if by speech and in other ways by which the one holding intercourse incurs minor excommunication the one excommunicated (*excommunicatione majori*) becomes more obdurate, the judge can, after a canonical admonition, impose upon those who hold such intercourse the same censure that he imposes upon the *communicantes in crimine.* Otherwise the excommunication imposed does not bind, and those imposing it may expect a just penalty.[10]

CANON 13

Summary. Those exercising lawful administration of church properties must safeguard such properties and must not contract unnecessary debts. At the beginning of a new administration an inventory must be made of all movable and immovable properties, properly signed and sealed. A transcript of this is to be given to the new incumbent and to the prelate invited by him. Rulers of churches are forbidden to put themselves or their churches under obligation to others, or to contract debts that may prove a source of trouble.

Text. Our pastoral duty urges us to turn our attention to the delapidated churches, and by a salutary constitution provide against their going to ruin in the future. Since the unfathomable greed of usury has brought many churches to the verge of destruction, and some prelates are very negligent and remiss in the matter of paying debts, especially those contracted by their predecessors, and are too much inclined to contracting further debts and mortgaging the properties of the churches, and since they are also negligent in taking care of things already acquired, preferring for their own honor to do

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[10] Kober, *Der Kirchenbann*, pp. 412–15.

a little building than to safeguard goods, to recover those discarded, to restore those lost, and to repair those fallen to ruin, that in the future they may not excuse themselves on any plea however plausible and fasten their own negligence on their predecessors or others, we, with the approval of the council, decree that bishops, abbots, deans, and others exercising lawful and ordinary administration, shall within one month after entering upon office, notice having been given earlier to his immediate superior, so that he may be present in person or through some other reliable and competent ecclesiastical person, those being present who have been called especially for this by the chapter or convent, see to it that an inventory is made of the things taken over by them at the beginning of their administration, in which shall be carefully recorded the movable and immovable properties, books, charts, instruments, privileges, ecclesiastical ornaments, and all other things that belong to the furnishings of a city or rural establishment; also the debts and claims must be recorded, that it may be known by the superior should it be necessary, and by those also who have been charged with the care of the churches, in what condition the church was when they took charge of it, how they shall govern it during their incumbency, and in what state they shall leave it at their death or in the event of removal. Archbishops who are immediately subject to the Roman pontiff must invite one of their suffragans who shall appear either personally or *per alium*, and abbots and other minor exempt prelates must invite a neighboring bishop, who, however, may claim for himself no right in the exempted church. Said inventory must be provided with the seals of the new incumbent and his clerics, as well as of the representative of the archbishop and in the case of abbots and minor exempt prelates, of the neighboring bishop, and must be preserved with due care in the archives of the church. A transcript of this inventory, similarly sealed, is to be placed in the hands of the newly installed incumbent and in the hands also of the prelate invited by him. The church property at hand must be carefully guarded and its administration properly conducted, and if it can be done, known debts must be paid as soon as possible from the movable property of the church. But if this movable property does not suffice for a speedy payment of the debt, all incomes, except those needed to cover absolutely necessary expenses, must be used to pay off the debts in case these are usurious or burdensome. If however they are not burdensome or usurious, a third part of the revenues, or, with the advice of those who were summoned to make the inventory, the greater part may be set aside for this purpose. Moreover, by the authority of the same council we strictly forbid the aforesaid rulers of churches to put either themselves or the churches committed to them under obligations to others, or to contract debts that might prove a source of trouble either in their own names or in the name of the churches.

But if there be urgent need, or if the condition of the churches should demand it, prelates with the consent and advice of their superiors, and archbishops and exempt abbots with that of the aforesaid parties summoned by them and of their colleagues, may contract debts that are not usurious if it can be done, but never may they contract them on the public markets. In the contracts must be given the names of the debtors and creditors, and the reasons why the debt is contracted; and even in case the money is used for the benefit of the church, we by no means wish that ecclesiastical persons or churches be pledged for its security. The privileges also of the churches are not to be given as security, but must be faithfully guarded; nor may other properties of the churches be given except perchance for necessary and beneficial debts contracted in the aforesaid manner.

That this salutary constitution may be inviolably observed and bear fruit, we decree that all abbots, priors, deans, and provosts of cathedrals and other churches at least once a year give a strict account of their administration to their colleagues, and that this account, written and signed, be faithfully read in the presence of the visiting superior. Archbishops and bishops likewise once a year must give an account of their administration of goods pertaining to their own table to their chapters, and over and above this, bishops must give a similar account to the metropolitans, and metropolitans to the legates of the Apostolic See or to those to whom the visitation of their churches has been committed by the Apostolic See. The written computations must always be kept in the treasury of the church, so that the later ones may be compared with the earlier and present ones, and thus it will be seen by the superior whether the administrator was diligent or negligent in the performance of his duties; in case of negligence, let the superior, having God before his eyes, and laying aside love, hatred, or fear, impose on him such a punishment that he may not deserve to receive another on this account either from God or from the superior or from the Apostolic See. The present decree we command to be observed not only by future prelates, but also by those already so promoted.

CANON 14

Summary. All possessors of dignities with or without jurisdiction, of prebends and benefices, who do not personally reside in them for at least six months, must for a period of three years give half of their revenues for the benefit of the Latin Empire of Constantinople. Those excepted, excluding the crusaders, who have an annual income of more than one hundred silver marks, must give one third of it for the same purpose. Those guilty of fraud in this matter shall incur excommunication.

Text. Our mind, occupied with arduous matters and distracted by divers cares, among other things directs the point of its considera-

tion chiefly to the liberation of the Empire of Constantinople. This it desires with an ardent desire and this constitutes one of its chief concerns. Though the Apostolic See has given it its earnest attention and rendered manifest assistance, and for a long time Catholics have struggled not without great hardships, heavy expenses, anxious toils, and a lamentable shedding of blood, yet the force of such assistance could not, because of sin, entirely free the Empire from the yoke of its enemies, for which reason we are, not without good cause, overcome by distress. But since the body of the Church by the loss of a dear member, namely, the aforesaid Empire, would incur a mark of scandalous deformity and sustain a weakness to be deplored, which could deservedly be imputed to sloth on our part and on the part of the Church herself if she were abandoned and handed over to the enemy to be freely oppressed, we firmly propose to come to the assistance of the Empire with early and effective help, that, with the Church strengthened by such aid, the Empire may be freed from the dominion of the enemy, brought back to union with the body, and feel, after the crushing blows of the enemy, the consoling hand of Mother Church, and, after the blindness of error, have vision restored by professing the Catholic faith. It is evident, however, that the more vigilant and intent the prelates of the churches and other ecclesiastical men are, and the greater the influence and aid they contribute toward its liberation, the more surely are they bound to procure an increase of ecclesiastical liberty for the faith, chiefly because, with the aiding of the Empire, assistance will in consequence be given to the Holy Land. Therefore, that speedy and suitable aid may be extended to the aforesaid Empire, we decree with the approval of the council that all possessors of dignities with and without jurisdiction, of ecclesiastical prebends and other benefices, who do not personally reside in them for at least six months, whether they have one or more, must for a period of three years give one half of their (ecclesiastical) revenues to collectors appointed by the Apostolic See for this purpose. Excepted are those who are in our service and in the service of our brethren (the cardinals) and their prelates; those, moreover, who are on a pilgrimage or in schools, or who by order of the above prelates have care of the business of their churches; also those who take or have taken the crusader's cross or personally go to the aid of the Empire. If any of those excepted have an ecclesiastical income of more than one hundred silver marks, they must annually give one-third of it to the above mentioned collectors to be used for the common cause. From this provision only the crusaders are excepted. All this we wish to be observed notwithstanding any customs or ecclesiastical statutes to the contrary, or any indulgences granted by the Apostolic See to churches or persons, ratified under oath or in any other manner. And

if perchance anyone should deliberately commit fraud in this matter, let him incur the sentence of excommunication. We ourselves shall from the revenues of the Roman Church, after one-tenth has been deducted for the aid of the Holy Land, deduct another tenth to be devoted entirely to the needs of the aforesaid Empire. Moreover, since the help given to the Empire redounds particularly to the welfare of the Holy Land, and since the liberation of the latter is greatly facilitated through the liberation of the former, we, trusting in the mercy of God and in the authority of the Blessed Apostles Peter and Paul, from whom we, though unworthy, have received the power of binding and loosing, grant to all who go to the aid of the Empire the same remission of sins [11] and we desire that they enjoy the same privileges and the same immunity as have been granted to those who go to the aid of the Holy Land.

CANON 15

Summary. Prelates are commanded to use their influence in their sermons and in the confessional to induce the faithful to leave in their testaments something for the assistance of the Holy Land or for the Empire of Constantinople.

Text. The children of the Church have for a long time contributed lavishly and many have laid down their lives in order to win back the land which the Son of God consecrated with His blood, as we learn from the things that formerly happened to the Christians fighting against the infidels across the sea. But, since it is particularly the desire of the Apostolic See that with the help of God the redemption of this land be speedily brought about, we take occasion for procuring the favor of God to arouse by our letters your (the prelates') interest in the cause. We therefore request and beseech you in the Lord Jesus Christ, commanding that in your sermons or when in confession you impose penance, you induce by pious admonitions the faithful committed to your care, a special indulgence, should you see fit, having been granted in this matter, that in the testaments which they make they may, for the remission of their sins, leave something for the assistance of the Holy Land or for the Empire of Constantinople. Moreover, we ask you to see to it that the money which they give for assistance of this kind be faithfully preserved in certain places under your seals, and that other things (immovable goods) bequeathed for this purpose be carefully put in writing. This work of piety in which we seek only the interests of God and the salvation of the faithful, let your goodness execute with such promptness that in the end you may hope for the reward of heavenly glory from the hand of the eternal Judge.

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[11] That is, a remission of sins *quoad poenam*, not *quoad culpam*.

CANON 16

Summary. All roads and passages by which the Tartars can enter Christian countries must be carefully examined and so fortified with ditches, walls, and other constructions as may appear necessary to frustrate their advance.

Text. Desiring above all things the expansion of the Christian religion far and wide over the earth, we are overcome with inexpressible grief when some at times so oppose our desire in this matter by contrary aims and actions that they strive with every effort and power to remove that religion utterly from the face of the earth. The savage race of Tartars, seeking to subjugate or rather to annihilate the Christian people, having collected its forces, entered Poland, Russia, Hungary, and other Christian regions, and, sparing neither sex nor age, but venting its rage with horrible cruelty on all without distinction, inflicted upon those countries an unheard-of destruction. And with unbroken progress, for it knows not a sword idle in the scabbard, it carries an incessant persecution to other countries, in order that, later attacking the more powerful Christian armies, it may exercise its savageness more fully; and thus the earth being bereaved of the faithful, which God forbid, faith may turn away while it bemoans its own followers who were conquered by the ferocity of that race. Therefore, that so detestable an aim of that race may not be realized, but by the power of God may fail and terminate in the opposite direction, it must be considered seriously by all Christians and the proper precaution taken that its progress may be so impeded that it cannot make any further approach toward them by any mailed arm however powerful. Therefore, with the advice of the holy council we admonish, exhort, and command all the faithful that all roads and passages by which that race can enter Christian countries, be carefully examined and so fortified with ditches, walls, and other constructions as may appear necessary, so that any further approach may be effectively frustrated. But in case of its actual approach, this must first be made known to the Apostolic See, so that the pope may obtain for you the aid of the faithful, and you with the help of God may be safe against the exertions and insults of that race. We will contribute abundantly toward such expenses as you may deem necessary and useful, and we will see to it that the Christians of all provinces contribute proportionately to meet this common danger. We will, moreover, in regard to this matter dispatch letters similar to the present one to other Christians through whose territory the aforesaid race may gain entrance.

CANON 17

Summary. Any person, whether ecclesiastic or layman, who brings about the death of another by means of assassins, incurs *ipso facto* excommunication and deposition.

Text. Descending from heaven to earth and suffering death, Jesus Christ, the Son of God, on the eve of His ascension, that He might not leave without a shepherd the flock redeemed by His precious blood, committed its care to the Blessed Apostle Peter, that he by the firmness of his faith might confirm that of others and by the ardor of his devotion move them to works of salvation. Wherefore, we, the successor of the same Apostle and, though unworthy, the vicar of the Redeemer on earth, earnestly concerned about the guardianship of that flock, wish to exert ourselves on behalf of the salvation of souls by removing dangers and by providing for the future, so that negligence being cast aside and diligence exercised, we may with the help of God's grace win souls to Him.

With horrible cruelty and inhuman savagery some men so thirst for the death of others that they cause them to be slain by assassins and thus bring about the death not only of the body but also of the soul, unless they happen to be fortified with divine grace. Therefore, wishing to avert such danger to souls and to chastise such execrable presumptions with the sword of ecclesiastical censure, so that the fear of punishment may put an end to such conduct, especially when prominent persons, fearing to be destroyed in that way, have been forced to seek security from the chief of the assassins and thus in some manner to purchase their life from him not without detriment to Christian dignity, with the approval of the holy council we decree that any prince or prelate, or for that matter any ecclesiastical or secular person, who shall cause or command any Christian to be slain by the aforesaid assassins, though death may perchance not follow the attack, as well as anyone who shall receive, defend, or conceal them, incurs *ipso facto* the sentence of excommunication and deposition from dignity, honor, order, office, and benefice, which may then be freely conferred on others by those to whom such collation pertains. Let the entire Christian people forever discredit him as a dishonor and disgrace to the Christian religion, and should it in the future be established that anyone has committed so execrable a crime, no new declaration of excommunication or deposition is required.[12]

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[12] Hefele and others do not give this canon as one that we know with certainty to have been published by the Pope with the concurrence of the council; hence they place it on the list of canons whose issuance by this council is doubtful. However, the fact that it contains the formula *sacri approbatione concilii statuimus*, leaves no doubt that it is a genuine conciliar decree. I have therefore added it as number seventeen in this series.

CANON 18

Summary. A series of decrees covering the matter connected with the preparation of a crusade to the Holy Land.

Text. Being distressed at heart because of the deplorable dangers threatening the Holy Land, but especially at the misfortunes that are known to have lately befallen the faithful dwelling there, we hope with the help of God to deliver it from the hands of the ungodly, decreeing with the approval of the holy council that the crusaders keep themselves so prepared that at the opportune time, which will be made known to all the faithful by preachers and special papal legates, they may meet in suitable places from which they may proceed with the blessing of God and with the Apostolic blessing to the aid of the Holy Land. Priests and other clerics who are with the Christian army, subjects as well as prelates, must be diligent in prayer and exhortation, teaching them (the crusaders) by word and example that they have always before their eyes the fear and love of God, lest they say or do something that might offend the majesty of the eternal King. And, should any have fallen into sin, let them quickly rise again through true repentance, practicing humility both interiorly and exteriorly, observing moderation in food as well as in clothing, avoiding dissensions and emulations, and divesting themselves of all malice and ill will, that being thus fortified with spiritual and material arms, they may fight with greater success against the enemies of the faith, not indeed relying on their own strength but putting their trust in the power of God. Let the nobles and the powerful who are in the army and the rich be persuaded by the pious admonitions of the prelates that in consideration of the One crucified, for whose sake they have taken the crusader's cross, they abstain from all useless and superfluous expenditures, especially from those connected with revelings and banquets, contributing this money to the aid of those persons by whom the affairs of God can be advanced; for which let them be granted a remission of their sins according as the prelates may deem fit. To the clerics who are in the Christian army we grant for a period of three years as complete an enjoyment of their benefices as if they actually resided in them, and they may, if necessary, even give them as pledges during this time. Therefore, that this undertaking may not be impeded or retarded, we strictly command all prelates that each one in his own territory induce those who have laid aside the crusader's cross to resume it, and carefully to admonish them and others who have taken the cross, as well as those who happen to be engaged for this purpose, to renew their vows to God, and if necessary to compel them by excommunication and interdict to abandon all delay. Moreover, that nothing connected with the affairs of our Lord Jesus

Christ be omitted, we wish and command that patriarchs, archbishops, bishops, abbots, and others who have the care of souls, diligently explain the meaning of the crusade to those committed to them, adjuring (through the Father, Son, and Holy Ghost, one, only, true and eternal God) kings, dukes, princes, marquises, counts, barons, and other prominent men, as well as the rulers of cities, villages, and towns, that those who cannot go personally to the Holy Land, will furnish a suitable number of soldiers, and, for a period of three years, in proportion to their resources, bear the necessary expenses connected therewith for the remission of their sins, as we have made known in the general letters already sent over the world and as will be expressed in greater detail below. In this remission we wish not only those to participate who for this purpose furnish their own ships, but those also who undertake to build ships. To those declining to render aid, if perchance any should be found to be so ungrateful to God, the Apostolic See firmly protests that on the last day they will be held to render an account to us in the presence of a terrible Judge. Let them first consider with what security they can appear in the presence of the only begotten Son of God, Jesus Christ, into whose hands the Father has given all things, if in this matter they refuse to serve Him who was crucified for sinners, by whose favor they live, by whose benefits they are sustained, and by whose blood they were redeemed.

With the approval of the council we further decree that absolutely all clerics, subjects as well as superiors, shall, in aid of the Holy Land and for a period of three years, pay into the hands of those appointed for this purpose by the Apostolic See a twentieth part of the revenues of their churches; some religious orders only being excepted, and those (clerics) also who take or already have taken the crusader's cross and are about to set out personally. We and our brethren, the cardinals of the Holy Roman Church, will pay a tenth of our revenues. All are bound to the faithful observance of this under penalty of excommunication, so that those who deliberately commit fraud in this matter will incur that penalty.

Since by the just judgment of the heavenly King it is only right that those who are associated with a good cause should enjoy a special privilege, we exempt the crusaders from collections, taxes, and other assessments. Their persons and possessions, after they have taken the cross, we take under the protection of Blessed Peter and our own, decreeing that they stand under the protection of the archbishops, bishops, and of all the prelates of the Church of God. Besides, special protectors will be appointed and, till they return or till their death shall have been certified, they shall remain unmolested, and if anyone shall presume the contrary, let him be restrained by ecclesiastical censure.

In the case of crusaders who are bound under oath to pay interest,

we command that their creditors be compelled to cancel the oath given and to cease exacting interest. Should any creditor force the payment of interest, we command that he be similarly forced to make restitution. We command also that Jews be compelled by the secular power to cancel interest and, till they have done so, intercourse with them must be absolutely denied them by all Christians, under penalty of excommunication. For those who cannot before their departure pay their debts to the Jews, the secular princes shall provide such a delay that from the time of their departure until they return or until their death is known, they shall not be embarrassed with the inconvenience of paying interest. If a Jew has received security (for example, a piece of ground) for such a debt, he must, after deducting his own expenses, pay to the owner the income from such security. Prelates who manifest negligence in obtaining justice for the crusaders and their servants, shall be subject to severe penalty.

Since the corsairs and pirates too vehemently impede assistance to the Holy Land by capturing and robbing those who go there and those returning, we excommunicate them and their principal abettors and protectors, forbidding under threat of anathema that anyone knowingly hold intercourse with them in any contract of buying and selling, and enjoin upon the rulers of cities and their localities that they check them and turn them away from this iniquity. And, since an unwillingness to disturb the perverse is nothing else than to favor them and is also an indication of secret association with them on the part of those who do not resist manifest crime, we wish and command that severe ecclesiastical punishment be imposed by the prelates on their persons and lands. Moreover, we excommunicate and anathematize those false and ungodly Christians who furnish the enemies of Christ and of the Christian people with arms, or iron and wood for the construction of ships; those also who sell them ships and who in the ships of the Saracens hold the post of pilot, or in any other way give them aid or advice to the detriment of the Holy Land; and we decree that their possessions be confiscated and they themselves become the slaves of their captors. We command that this sentence be publicly announced in all maritime cities on all Sundays and festival days, and that to such people the church be not opened till they return all they have obtained in so reprehensible a traffic and give the same amount of their own in aid of the Holy Land. In case they are not able to pay, then let them be punished in other ways, that by their chastisement others may be deterred from undertaking similar pursuits.

Furthermore, under penalty of anathema, we forbid all Christians for a period of four years to send their ships to Oriental countries inhabited by the Saracens, in order that a greater number of ships may be available to those who wish to go to the aid of the Holy

Land and that to the Saracens the benefits may be denied which they usually reap from such commercial intercourse. Though tournaments have been under certain penalties generally forbidden by different councils, since however at this time they are a serious obstacle to the success of the crusade, we strictly prohibit them under penalty of excommunication for a period of three years.

For the success of this undertaking it is above all else necessary that princes and Christian people maintain peace among themselves. Therefore, with the advice of the holy council, we decree that for four years peace be observed in the whole Christian world, so that through the prelates discordant elements may be brought together in the fulness of peace, or at least to the strict observance of the truce. Those who refuse to acquiesce in this, are to be compelled by excommunication and interdict, unless the malice that inspired their wrongdoings was such that they ought not to enjoy such peace. But, if by chance they despise ecclesiastical censure, they have every reason to fear lest by the authority of the Church the secular power will be invoked against them as disturbers of the affairs of the One crucified.

We, therefore, by the mercy of the omnipotent God, and trusting in the authority of the Blessed Apostles Peter and Paul, in virtue of that power of binding and loosing which God has conferred on us, though unworthy, grant to all who aid in this work personally and at their own expense, a full remission of their sins [13] which they have sincerely repented and orally confessed, and promise them when the just shall receive their reward an increase of eternal happiness. To those who do not personally go to the Holy Land, but at their own expense send there as many suitable men as their means will permit, and to those also who go personally but at the expense of others, we grant a full remission of their sins. Participants of this remission are, moreover, all who in proportion to their means contribute to the aid of the Holy Land, or in regard to what has been said give opportune advice and assistance. Finally, to all who in a spirit of piety aid in bringing this holy undertaking to a successful issue, this holy and general council imparts the benefits of its prayers and blessings that they may advance worthily to salvation. Amen.

There is no doubt that in addition to these eighteen decrees, Innocent IV, with the approval of the council, issued a number of others. All of these, together with several that he issued without the concurrence of the council, he shortly afterward united in a single collection which he transmitted to the Universities of Paris and Bologna for academic and judicial use. Of this collection we have two printed editions, one of which was provided in 1747 by J. H. Böhmer from a Berlin MS and published in his

[13] Cf. canon 14, note 11.

Corpus juris can.,[14] and the other was published in 1779 by Mansi from a Lucca MS.[15] Each of these editions contains forty-two decrees, which have but few textual variants and are in part evidently abbreviations of the original synodal text. We find in them (1) the first twelve of the eighteen decrees quoted above; (2) a number of others that undoubtedly had their origin in the council; and (3) several other decrees of Innocent IV which seem not to have any connection with the council. It is extremely difficult and in not a few cases impossible to distinguish which of those under numbers 2 and 3 were published with the approval of the council and which were not, since the superscription *Idem* (Innocentius IV) *in eodem* (concilio Lugd.) is not always accurate. This collection of Innocent IV and a later one of Gregory X, were united by Boniface VIII with his own decrees in the *Liber sextus*, which he intended as a continuation of the five books of decretals of Gregory IX. Here we have the same confusion, the *Idem in eodem* at the head of decrees which we know were not issued by Innocent with conciliar concurrence. The following nine decrees, taken from Hefele, we have good reason to believe were issued by Innocent in concurrence with the council.[16] To these nine Hefele adds four taken from the constitution *Romana Ecclesia*. But Hefele is evidently mistaken, because this constitution was published by Innocent IV on March 17, 1246, eight months after the dissolution of the council.[17]

SECOND SERIES

CANON 1

Summary. In case of an appeal to us against an election, postulation, or provision, the parties concerned must within a month betake themselves to the Apostolic See. If twenty days after the arrival of one party the other has not appeared, the matter may be disposed of. Failure to prove the charge of formal error, entails payment of expenses, and failure to prove charges against person elected, *ipso facto* suspension.

Text. **We decree that if anyone attacks an election, postulation, or provision, either because of a formal error or because of the person elected, and for that reason appeals to us (the pope), both the**

[14] See II, *Appendix*, 351–62.

[15] See XXIII, 650–72.

[16] Hefele-Leclercq, V, 1662–74. Canon 9 (pp. 1669 f.) is the one transferred to the first series as canon 17. Potthast, p. 996.

[17] Innocent IV sent the constitution *Romana Ecclesia* to the University of Paris on April 21, 1246. Denifle, *Chart. Univ. Paris.*, I, no. 152; Potthast, no. 12062. Soon afterward he sent to the same university the decrees that in 1245 he had promulgated in the Council of Lyons. Denifle, *Chart.* I, no. 153. To these decrees he added the constitution *Romana Ecclesia* which he had divided into ten chapters. In this way arose the common but erroneous belief in later times that the constitution *Romana Ecclesia* was published in 1245 in the Council of Lyons.

complainant and the defendant, and generally all who are concerned, must within a month of the attack begin their journey to the Apostolic See, either personally or through representatives properly instructed in the matter. If one of the parties has not arrived twenty days after the arrival of the other party, the matter may be disposed of in accordance with justice regardless of such absence. We wish and command that this be observed in *dignitatibus, personatibus, et canonicis*. We add, moreover, that he who has not fully proved his charge of formal error, be condemned to pay the expenses which the other party declares to have thereby incurred. On the other hand, he who has failed to prove his charges against the person elected, is *ipso facto* suspended from his ecclesiastical benefices for a period of three years. If within that time he does not divest himself of his temerity, he is *ipso jure* forever deprived of them with no hope or pledge for mercy, unless it has been proved conclusively that a probable and manifest cause excuses him from the charge of calumny.

CANON 2

Summary. In civil matters an *exceptio spolii*, introduced by a person other than the plaintiff, is not admitted. In criminal causes, if made by a third party, it is admitted, *dummodo sit de tota substantia vel majori parte*. The exception must be proved within fifteen days, otherwise he shall be condemned to pay the expenses. The one despoiled by a third party must seek restitution within the time specified by the judge, otherwise he shall be accused *exceptione non obstante*.

Text. There is a persistent rumor that the *exceptio spolii* sometimes deceitfully introduced in tribunals, impedes and confuses ecclesiastical causes, because, when an exception is admitted, appeals are interposed and thus the investigation of the main issue is interrupted or frequently lost sight of. Wishing to put an end to strife and to curtail occasions for calumny, we decree that in civil matters a judge may not postpone procedure in the main issue by reason of an *exceptio spolii* introduced by a person other than the plaintiff. But, if in a civil matter the defendant declares that he has been despoiled by the plaintiff and in a criminal matter by someone else, he must within fifteen days prove his declaration, otherwise let him be condemned to pay the expenses which the plaintiff incurred on his account, a judicial estimate of these having been made beforehand; or, if the judge should deem it expedient, let him be punished otherwise. By one despoiled we mean in this case one who, when criminally accused, declares that he has been stripped of all his possessions or of the greater part of them by violence, and in this sense the canons speak and are to be understood, for it is imprudent to fight with bare hands and to oppose ourselves to the enemy without weapons of defense; the one despoiled, therefore, has the advantage that being already stripped he cannot be stripped again. Among the

learned, however, it is disputed whether one robbed by a third party may make use of that fact against his accuser or whether time ought to be granted him by the judge within which he may demand restitution, lest he should wish to continue in that destitution in order to evade all accusation, which we consider consonant with justice and right; but if within the time granted him he has not sought restitution and does not, when he can, bring the case to an end, he can be accused regardless of the *exceptio spolii*. In addition to this we decree that the deprivation of private goods may not be brought up against one in charge of ecclesiastical affairs or vice versa.

CANON 3

Summary. A defendant introducing an exception of excommunication against a plaintiff must indicate the kind of excommunication and the excommunicator; he must within eight days prove his charge, otherwise the judge may proceed in the case, condemning him to pay the expenses. If the charge is proved, or if a similar exception is introduced and proved, the plaintiff shall be excluded and the proceedings so far regarded as valid. No further exceptions may be introduced *nisi ex causa*. An exception made after the matter has been adjudicated, does not invalidate the sentence. One publicly excommunicated must be excluded from the proceedings.

Text. Since the introduction of an exception of major excommunication into any part of judicial trials is often inspired by malice for the purpose of delaying matters and of overwhelming the plaintiffs with fear, fatigue, and expenses to compel submission or reconciliation, thus defrauding them of their rights, it is hereby decreed that when any defendant introduces an exception of excommunication against a plaintiff, he must name the kind of excommunication and also indicate the name of the one who imposed the excommunication; he must, moreover, within eight days prove his charge by conclusive evidence, otherwise the judge shall proceed with the case, condemning him to pay the expenses which the plaintiff declares to have incurred on account of the charge. If, however, the charge is proved, or if another exception of excommunication is introduced and proved, the plaintiff is to be excluded from the proceedings till he shall be deemed worthy to receive absolution, and what has been accomplished so far in the case shall be regarded as valid. But, if the second exception likewise was not proved, no other is to be introduced, unless a new excommunication should be imposed or clear proof in regard to a former one should come to light. The introduction of an exception after the matter has been finally adjudicated, does not invalidate the sentence but impedes its execution, observing this provision, that if the plaintiff has been publicly excommunicated and the judge should at any time know this, he may not delay to exclude him from the proceedings, though the defendant may make no exception in the matter.

CANON 4

Summary. An ecclesiastical judge who inflicts a judicial injustice upon anyone, is *ipso facto* suspended and must make good the loss sustained by the injured party. Should he, while suspended, perform an act *in divinis*, he incurs irregularity from which he can be absolved only by the Apostolic See.

Text. Since the eternal Judge will not hold guilty him whom an unjust judge condemns, according to the inspired writer: "He will not condemn him when he shall be judged" (Ps. 36: 33), let ecclesiastical judges take heed that in judicial trials they be not actuated by a grudge or ill will, by fear or favor, and let them not in consideration of a reward or its expectation frustrate the ends of justice, but in all things that concern legal causes, especially the matter of imposing sentences, let them have only God before their eyes, imitating the example of him who having entered the tabernacle to pray referred to the Lord the complaints of the people that He might judge them in His own court. If any ecclesiastical judge, ordinary or delegated, disregarding his reputation and contrary to conscience and justice, should for any sordid consideration so prostitute his office as to inflict a judicial injustice upon any party, he is *ipso facto* suspended *ab executione officii* for one year and is to be condemned to pay to the injured party the losses incurred by reason of his partiality, and should he during the period of suspension perform an act *in divinis*, he incurs, in accordance with the canons, irregularity from which he can be absolved only by the Apostolic See, those decrees remaining in force which impose penalties on judges who debase their office. For it is but just that he who has presumed to offend in so many ways, be chastised by manifold penalties.[18]

CANON 5

Summary. He who appeals to the pope *in judicio vel extra*, must put in writing the reason for the appeal and petition for a writ. The principals in the case or their representatives, properly instructed, are to betake themselves to the pope. In appeals from definitive sentences the law remains unchanged.

Text. It is our ardent desire to lessen litigation and to relieve the people of burdens. Wherefore we decree that if anyone thinks he should appeal to us judicially or extra-judicially against an interlocutory decree or grievance, he should put in writing the reason for the appeal and petition for a writ, which we command to be issued to him, in which the judge should set forth the reason of the appeal and why the appeal was not admitted, or whether perhaps it

[18] The fact that the one suspended incurs an irregularity in case he performs an act *in divinis*, indicates that the suspension in this decree is *ab jurisdictione et ab ordine*. Kober, *Der Kirchenbann*, p. 215; *idem*, *Die Suspension*, pp. 264 f.

was granted out of respect to a superior. After this, considering the distance and the nature of the case, sufficient time having been granted to the appellant to prosecute the appeal, if the appellee should so wish and request, let the principals, either personally or through advocates empowered to act, provided with the data pertaining to the case, betake themselves to the Apostolic See, and, if we should deem it expedient, the case may be tried, as by law it could and should, on the expiration of the time limit of appeal or before by agreement of the parties; those things remaining unchanged which ancient statutes have laid down in the matter of appeals from definitive sentences. If the appellant fails to observe the foregoing provisions, his appeal shall be regarded as void and he shall be returned to the judge of the first instance to be condemned to the expenses involved by his failure. And if the appellee should despise this statute, he shall be proceeded against as in contempt both as to costs and as to the cause in so far as it is permitted by the law. For it is but just that the law should take its course against him who mocks the law, the judge, and the litigant.

CANON 6

Summary. Those exempt may in the matter of transgressions in non-exempt localities be summoned before the local ordinaries; in exempt localities, not. Over monasteries enjoying immunity against interdict, suspension, and excommunication, ordinaries in these matters have no jurisdiction, unless monks of such monasteries are sent to priories subject to the ordinaries.

Text. Wishing that the liberty which the Apostolic See has by the privilege of exemption granted to some, shall remain so unimpaired that it may not be made the object of attack by others, and that they to whom it has been granted may not abuse it, we decree that however much liberty those exempt may enjoy, they may nevertheless in the matter of transgressions or accusation be lawfully summoned before the local ordinaries, who may in these matters exercise, according as the law requires, jurisdiction over them. Are they, then, absolutely without liberty in these matters? No indeed, because they cannot be summoned before the ordinaries when the crime was committed or the contract made or a matter disputed in an exempt locality; nor can they be summoned to where they have a domicile if the crime was committed in some other place. Nor under pretext of domicile have local ordinaries any power to send them there where they have been summoned or to command them to the summons, except in cases in which canon law commands them to be subject to the jurisdiction of the bishops. We decree the same in regard to those to whom has been granted by Apostolic privilege the right to make answer to those accusing them only before a particular judge. In regard to those, however, whom an Apostolic indult

renders immune against interdict, suspension, and excommunication by a certain person, as are many religious, among whose privileges is contained the provision that a certain bishop or archbishop may not presume to interdict, suspend, or excommunicate the monks of monasteries for any cause or in any place, these ordinaries may not at all exercise their jurisdiction in regard to these things wherever these monks may be, unless they have been sent or assigned, either as superiors or as subjects, to monasteries subject to the same ordinaries; for, while they can be freely recalled to the former monastery and may be regarded as monks of two monasteries, since it is not incongruous for a monk to have two monastic dwellings, one subject to the other or dependent on it, yet because these are subject to the ordinaries, they may licitly use their jurisdiction over the monks in the aforesaid matters as long as they reside there.

CANON 7

Summary. The imposition of excommunication must be done in writing, the reason given, and a copy, if requested, handed to the excommunicated. Violation entails suspension. The superior to whom recourse is had, may nullify the sentence and condemn the excommunicator to pay all the expenses and repair all losses incurred by the one excommunicated. The same holds good in regard to suspension and interdict.

Text. Since excommunication is a medicinal and disciplinary remedy, not seeking the spiritual death of the individual, let him, nevertheless, on whom it has been imposed not despise it, and let the ecclesiastical judge be cautious that in imposing it he show himself to be applying it to a condition that needs correction and a healing remedy. Whoever imposes a sentence of excommunication must do so in writing, and he must give in writing the reason for its imposition. Should the one excommunicated request a copy of the document, he is to be provided with one within a month, and of this request we wish that a public record be made, provided with authentic seals. Judges who rashly violate any provision of this decree, are *ipso facto* suspended for one month *ab ingressu ecclesiae et divinis officiis*. Let the superior to whom recourse is had, while nullifying such a sentence without scruple, condemn the excommunicator to pay all the expenses and repair all the damages incurred by the one excommunicated, and, should he deem it expedient, let him impose other penalties so that the judges may learn from this how grave a matter it is to hurl sentences of excommunication without mature deliberation. The same we wish to be observed in regard to sentences of suspension and interdict. Let the prelates of churches and judges take heed that they do not incur the aforesaid penalty of suspension, since, if under such suspension they presume to perform functions *in divinis*, they incur in accordance with the canons ir-

regularity, from which they can be absolved only by the supreme pontiff.[19]

CANON 8

Summary. He who petitions to be absolved *ad cautelam,* declaring that the excommunication imposed is null, may be absolved notwithstanding objections to the contrary, unless it be proved within eight days that the censure was imposed for a legitimate reason. He who declares that he was excommunicated after an appeal, must prove it and *probatione pendente in judiciis evitabitur, extra judicium vero non.*

Text. Some are inclined to doubt whether, when anyone petitions to be absolved *ad cautelam* by a superior, claiming that the sentence of excommunication imposed on him is null, the absolution ought to be granted him without objection; and secondly, whether before an absolution of this kind, he who claims that he will prove before a court that he was excommunicated after a legitimate appeal or that the sentence was an error, is to be avoided in all things except in matters pertaining to the furnishing of that proof.

In answer to the first doubt, we decree that to one making the petition absolution is not to be denied, even though the excommunicator objects, unless he declares that he excommunicated him for a manifest offense. In which case a period of eight days is to be granted him to prove his objections. If he does so, the sentence may not be removed, unless there is sufficient evidence that the one excommunicated will amend; but if he does not prove that the offense was manifest but still remains doubtful, then absolution may be given *ad cautelam,* provided the one excommunicated has given satisfactory assurances to appear in court if later it should be found that the excommunication had been justly and canonically imposed.

In regard to the second point, we decree that he who is admitted to furnish such proof, is during the time that he furnishes that proof to be avoided *in judiciis.* Outside of court, however, he may be admitted to offices, postulations, elections, and the exercise of other legitimate acts.

CANON 9

Summary. Bishops incur no sentence of suspension or interdict unless it is expressly stated in the documents.

Text. Since it is dangerous for bishops and their superiors on account of their pontifical duties to incur *ipso jure* the sentence of interdict or suspension, we decree that bishops and other superior prelates do not under sanction of any constitution incur the aforesaid sentences unless express mention is made of them to that effect in the constitutions.

[19] Kober, *Der Kirchenbann,* pp. 172 f.

THE FOURTEENTH GENERAL COUNCIL (1274)

SECOND COUNCIL OF LYONS

History. Gregory X had scarcely ascended the papal throne (March 27, 1272), when he began to make preparations for a general council. The date of its opening he set for May 1, 1274. To this end he sent letters of invitation to the prelates and Christian princes. Similar invitations were sent to Patriarch Joseph of Constantinople and to Emperor Michael VIII (Palaeologus), who since 1261 had been in possession of Constantinople and as early as 1262 had manifested a desire for union with the Latin Church. In his letters Gregory urges all to be present for the opening of the council; the city in which it was to be held would be made known to them later. Only one or two bishops of each province are to remain at home to attend to necessary ecclesiastical affairs. Cathedral and other chapters are to send representatives. In the meantime, after long deliberation, the Pope (April, 1273) chose Lyons as the most advantageous city for the holding of the council, because, however much he preferred some Italian city, he realized that only from the western side of the Alps could he hope to obtain the needed assistance for the Holy Land. In the Pope's mind, the chief purpose of the council was the liberation of the Holy Land by means of a crusade. Other objects he had in view were the reunion of the Eastern Church with that of Rome, and the reform of the Church in its clergy and laity. For the attainment of this threefold purpose, Gregory made the most elaborate preparations. To the heads of ecclesiastical provinces and religious orders he sent letters requesting suggestions as to the reforms that ought to be undertaken by the council and as to the remedies best suited to give them effect. In the interests of the Holy Land he sent out preachers with a view to prepare the ground for the organization of a new crusade. On June 3, 1273, he added to the College of Cardinals five new members,[1] among them St. Bonaventure (minister general of the Friars Minor) and the learned Dominican Peter of Tarentaise archbishop of Lyons (afterward Innocent V), and then left Orvieto for Lyons. From here he again (November 23, 1273) wrote to the Greek Emperor, urging him to send representatives to the council and thus contradict the rumors current for some time that he was not sincere in his desire for union. He invited to Lyons also St. Thomas Aquinas and requested him to bring with him the

[1] Eubel, *Hierarchia Catholica medii aevi*, I (Monasterii, 1913), 9.

treatise which, at the command of Urban IV, he had written against the errors of the Greeks. Thomas left Naples in January, 1274. His strength failed him, however, and he died in the Cistercian abbey of Fossa Nuova on March 7 of the same year.

Following a general fast of three days, Gregory opened the council (May 7, 1274) in the Cathedral of St. John, which had witnessed the sessions also of the First Council of Lyons. He himself presided, but the direction of its deliberations he entrusted to St. Bonaventure, charging him particularly to discuss with the Greeks those points that related to the abjuration of their schism. Altogether six sessions were held. In point of numbers it was a largely attended assembly, there being present about 250 archbishops and bishops, 70 abbots and heads of religious orders, and about 1,000 prelates of inferior rank and procurators.[2] In attendance were also the Latin patriarchs of Constantinople and Antioch and James I of Aragon, the only king present in person. Further, the ambassadors of the Kings of Germany, England, France, and Sicily, of Emperor Michael VIII (Palaeologus), and of the Khan of the Tatars. After the customary prayers, the Pope, choosing for his text (Luke 22: 15): "With desire I have desired to eat this pasch with you," delivered a sermon in which he dwelt chiefly on the threefold purpose of the council. In the second session (May 18), because of the excessive numbers and his desire to curtail expenses, the Pope granted permission to unmitered abbots and priors who had not been summoned by name to return home. Similar permission was granted to provosts, deans, archdeacons, and others, as well as to the proxies of some prelates, chapters, collegiate institutions, and monasteries.[3] In the same session the decrees *Pro zelo fidei* were enacted, providing that during a period of six years one-tenth of the revenues of all benefices in Christendom was to go to the pope for the purpose of a crusade for the conquest of the Holy Land.

On June 24, the representatives of Michael Palaeologus arrived at Lyons: Germanus the former patriarch of Constantinople, Theophanes metropolitan of Nicaea, Georgius Acropolites the imperial chancellor, and two other lay court officials. On June 29, the feast of SS. Peter and Paul, the Pope celebrated mass in the cathedral. The Epistle and Gospel were sung in Latin and Greek, and after the Creed had been sung in Latin it was repeated in Greek by Germanus, by the Italo-Greek bishops (who had been in union with Rome since the Council of Bari in 1098),[4] and two papal penitentiaries, the Dominican William of Moerbeke and the Franciscan John of Constantinople, both of whom possessed a knowledge of

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[2] Finke, *Konzilienstudien zur Gesch. d. 13. Jahrh.* (Münster, 1891), pp. 4 ff.

[3] *Id., op. cit.*, p. 116.

[4] Fortescue, *The Orthodox Eastern Church* (London, 1908), pp. 202 ff.

the Greek language. The article *qui a patre filioque procedit* was sung by the Greeks three times in a loud voice. The sermon was preached by St. Bonaventure. The fourth session was held July 6, and was devoted entirely to matters connected with the union. The sermon was preached by Peter of Tarentaise cardinal-bishop of Ostia. There was little discussion on the matter. The Greek envoys had been plainly instructed before their departure to concede everything and to interpose no obstacles that would thwart the efforts to effect a union. After the public reading of the letter of Michael Palaeologus, in which the Emperor had inserted as an expression of acceptance the symbol or creed that had been sent him by the Pope,[5] the Greeks in the name of the Emperor and of the Orthodox Church accepted the Roman primacy, the *filioque* and everything else, promised fidelity to the Latin Church and the protection of the Emperor to the Christians in the Holy Land. At the conclusion, Gregory intoned the *Te Deum* and delivered a discourse, again choosing for his text Luke 22: 15. Early in the morning of July 15 occurred the death of St. Bonaventure. He was buried on the evening of the same day in the church of the Friars Minor at Lyons. The mass was celebrated that morning by the Cardinal-Bishop of Ostia, who also delivered the funeral oration.

The fifth session was held July 16, and the sixth and last on the day following. Referring to the threefold purpose of the council, the Pope in his concluding address declared that two of these had been attained, namely, union with the Greeks and adequate measures for the Holy Land, not realizing at the time that both would prove a failure.[6] As to the third, the reform of morals, he deeply lamented the depravity of many prelates who were causing the corruption of the whole world. It is truly astonishing, he said, that some have no desire to reform themselves, while others, good and bad, voluntarily offer him their resignation. He again warns them to lay aside their wickedness. The bishops of Liege, Würzburg, and Rhodes, and the abbot of St. Paul in Rome were deposed for unworthiness. The number of responses turned in to his request for recommendations as to reforms among clergy and laity is not known. That many and various

[5] Denzinger, *Enchiridion*, nos. 461-66.

[6] The failure of the union was due in a great measure to the insincerity of the Greek Emperor. The clergy and people were unalterably opposed to it, and, clever politician that he was, he must have known that without their interest and co-operation no union could survive. But he saw in it the only way to obtain the Pope's protection against the powerful Charles of Anjou and other Western princes and thus save his crown. When once the prospects of a new crusade had vanished and fear from molestation by Western princes was reduced to a minimum, his interest in the union became cool also. It survived, however, till the Emperor's death in 1282, when his son Andronicus put an end to it.

The measures adopted by the council in aid of the Holy Land also proved a failure. The tithe was successfully raised, and in England and France preparations were made for the crusade, but for several reasons the project was not carried out.

complaints were sent in, there can scarcely be any doubt. Of the replies only three, so far as we know, have come down to us, namely, the *Opus tripartitum* of the Dominican Humbertus de Romanis,[7] the *Relatio* of Bishop Bruno of Olmütz,[8] and the *Collectio de scandalis ecclesiae*.[9] The council enacted a number of disciplinary decrees to meet current abuses. What it left undone in this respect, on account of the lack of time, the Pope promised to supply as soon as possible, particularly in the matter of parochial churches, that their rectors should not needlessly absent themselves and that suitable men be placed in charge of them.[10]

With regard to the time of publication of a few decrees attributed to this council, till recent years obscurity has played a conspicuous part. The publication by Dr. H. Finke in 1891 of valuable information discovered by him in an Osnabrück MS (thirteenth century) relative to this council, has done much to clarify an obscure situation and to solve what till then was an insoluble difficulty.[11] For nearly six hundred years the impression seemed to prevail that Gregory X published in this Council of Lyons thirty-one disciplinary decrees. That is the number given by Mansi, Hardouin, Labbe, and others, and, with the exception of no. 19, is also the number found in the *Liber sextus*. However, a few months after the dissolution of the council (November 1, 1274), Gregory published a collection of thirty-one decrees with the introductory statement: *Infrascrip-*

[7] This work has come down to us in two forms, a longer and a shorter one. The former is given by Crabbe, *Concilia omnia*, II (Coloniae, 1551), 967–1003, the latter by Mansi, *Conc. ampliss. coll.*, XXIV, 109–32. In recent years it has been made the subject of several special studies: Birkmann, "Die vermeintliche und die wirkliche Reformschrift des Dominikaner-Generals Humbert de Romanis," in *Abhandlungen zur Mittleren u. Neueren Geschichte*, Heft 62, Berlin, 1916; Michel, *Das Opus Tripartitum des Humbert de Romanis, O.P.*, Graz, 1926; *Theol. Revue*, XXVI (1927), 274 f.; Auer, *Studien zu d. Reformschriften für d. zweite Lyoner Konzil*, Freiburg i. Br., 1910.

[8] Höfler, "Analecten zur Gesch. Deutschlands u. Italiens," in *Abhandl. d. hist. Klasse d. Kgl. bayer. Akademie d. Wissenschaften*, IV Bd., III Abt. (München, 1846), 18–28; Hefele-Leclercq, V, 165 f.

[9] Hrsg. v. Döllinger, *Beiträge zur polit., kirchl. and Culturgeschichte d. letzten sechs Jahrh.*, III (Wien, 1882), 180–200. For a study of the authorship and sources of the treatise, cf. Stroick, *Verfasser u. Quellen der "Collectio de scandalis ecclesiae." Reformschrift d. Fr. Gilbert v. Tournay, O.F.M. zum 2. Konzil v. Lyon, 1274*, Quaracchi, 1930. Auer, *op. cit.*

[10] Mansi, XXIV, 37 ff.; Hefele-Leclercq, *Histoire des Conciles*, VI, 153–209; Hergenröther, *Handbuch d. allg. Kirchengeschichte*, II, 5th ed., 593–604; Martin, *Conciles et bullaire du diocèse de Lyon*, Lyon, 1905; Finke, *Konzilienstudien zur Gesch. d. 13. Jahrh.*, Münster, 1891; Göller, "Zur Gesch. d. zweiten Lyoner Konzils u. d. Liber Sextus," in *Röm. Quartalschrift*, XX (1906), 81–87; Chambost, "Le second concile général de Lyon, réunion des grecs à l'Église romaine," in *Université Catholique*, XIV (1893), 311–41; Norden, *Das Papsttum und Byzanz* (Berlin, 1903), pp. 470–562; Fortescue, *The Orthodox Eastern Church* (London, 1908), pp. 204–208; Lecoy de la Marche, "La prédication de la croisade," in *Revue des questions historiques*, XLVIII (1890), 5–28; Gottlob, *Die päpstl. Kreuzzugssteuern d. 13. Jahrh.*, Heiligenstadt, 1893.

[11] *Konzilienstudien.*

tas constitutiones nuper in generali concilio Lugdunensi et post sub certis articulis duximus promulgandas,[12] which collection, following a custom of the times, he sent to the Universities of Padua and Bologna, and, there can hardly be any doubt, also to the University of Paris, for academic and judicial use. Till recently the words *et post* in the above statement had been entirely disregarded or at least little noticed, with the result that, in spite of the Pope's explicit declaration, it was overlooked that some of these thirty-one constitutions were published *post concilium Lugdunense.* Respecting the time of the publication of most of these, the *Brevis nota eorum quae in concilio Lugdunensi acta sunt* leaves no doubt.[13] In the third session, it informs us, there were published twelve constitutions, namely, nos. 3, 4, 5, 6, 7, 8, 9, 15, 19, 24, 29 and 30. In the fifth session there were published fourteen, namely, nos. 2, 10, 11, 12, 16, 17, 20, 21, 22, 25, 26, 27, 28 and 31, and the last session witnessed the publication of no. 23 and of the decree *Cum sacrosancta.* Potthast declared that this last one was no longer extant, and his declaration has been generally accepted.[14] Thus four constitutions are excluded from the above enumeration, namely, no. 1, *Fideli ac devota* (from the title: *De summa trinitate et fide catholica*), nos. 13 and 14, *Licet canon* and *Nemo deinceps* (both from the title: *De electione*), and no. 18, *Ordinarii locorum* (from the title: *De officio ordinarii*); to which may be added the supposedly lost constitution *Cum sacrosancta.*[15] In my comments on no. 1, it will be shown that this decree is identical with the *Cum sacrosancta.* That leaves us three decrees that were published by Gregory *post concilium Lugdunense,* namely, nos. 13, 14 and 18. This is confirmed by a comparison of their contents with the declaration of the Pope in the last session of the council: "*Super ordinatione vero parochialium ecclesiarum,*" *monuit prelatos,* "*ne fraudentur rectorum suorum praesentia et viri idonei ponantur in eis, et super aliis dixit se cito dante domino apponere remedia opportuna, quod usque in ipso concilio fieri non potuit propter multorum negotiorum occupationem.*" Another confirmatory argument is furnished by the explanatory remarks of William Duranti on the words *et post* in his commentary on the decrees of this council.[16] Duranti was not only one of the most outstanding medieval liturgical writers but he was also one of the foremost

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[12] Potthast, *Regesta,* no. 20950.

[13] "Brevis nota" in Mansi, XXIV, 61–68.

[14] Potthast, no. 20862.

[15] Finke, *l. c.,* pp. 8 f.

[16] *In sacrosanctum Lugdun (ense) concilium sub Gregorio X Guilelmi Duranti cognomento speculatoris commentarius,* Fano, 1569. A biographical sketch of Duranti is given by Sauer, *Symbolik d. Kirchengebäudes u. seiner Ausstattung in d. Auffassung d. M-A.* (Freiburg i. Br., 1924), pp. 28 ff. Cf. also *Lexikon für Theologie u. Kirche,* III, 497.

canonists of his time. He accompanied the Pope to the council and as his secretary drew up its decrees, at least many of them.[17] In commenting on the words *et post*, he says: *Hoc ideo dicit, nam quaedam ex eis fuerunt post celebratum concilium promulgatae, videlicet, illa de elect. c. ubi periculum et c. licet canon et c. nemo et illa de off. ord. c. ordinarii, et qui vidit, testimonium perhibet veritati.*[18] With this the question as to which decrees were published after the council seems to be once and for all disposed of. In the following list I give the thirty-one decrees as they are found in the conciliar collections, retaining in their traditional places the three published after the council.

There were, moreover, published in this council decrees which not so long after their publication became lost, and consequently never found a place in any collection and developed into another insoluble difficulty.[19] The *Brevis nota* tells us that during the interval between the first and the second session Gregory called before him the bishops separately in groups to consult with them and to obtain their promise and co-operation in the matter of imposing a tax of one-tenth on all ecclesiastical revenues for the benefit of a crusade. The bishops and abbots immediately subject to the Holy See gave him assurances.[20] In the second session, after the customary prayers, the Pope again delivered a brief discourse on the threefold object of the council. Then, continues the *Brevis nota: Allocutione finita latae sunt constitutiones pro zelo fidei.* That a decree or decrees with the general title *Pro zelo fidei* relative to the collection of tithes for the aid of the Holy Land were read and enacted in the second session of the council, there has never been any doubt. References to it are found in letters of Gregory X[21] and in many reports relative to the council. Hefele[22] erroneously identified the *Pro zelo fidei* with the decree *Fideli ac devota*, which was published in the last session and is of dogmatic con-

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17 "(Gregorii X) jussu coacto Lugdun. concilio generali Guillelmus ipsius papae mandato in synodo multas constitutiones promulgandas curavit magna atque efficaci auctoritate, quas universas sub Nicolao III commentariis exornavit." From the prefatory remarks of the editor, Simon Maiolus.

18 Fol. IV. Besides the three decrees in question it will be noted that Duranti places the time of the publication of the *Ubi periculum* also after the close of the council. Cf. comments on canon 2.

19 Finke, pp. 11 ff.

20 "Inter primam et secundam sessionem dominus papa cum cardinalibus advocarunt segregatim archiepiscopos et quemlibet cum uno episcopo et abbate suae provinciae, et divisos habuit eos in camera sua, episcopos etiam et abbates qui immediate subsunt Romanae Ecclesiae, et petiit et obtinuit ab eis omnes decimas redituum et fructuum et proventuum ecclesiarum usque ad sex annos continuos, incipiendo a festo S. Joannis Baptistae anni domini millesimi ducentesimi septuagesimi quarti usque ad sex annos continuos futuros, sicut in constitutione habetur."

21 Potthast, nos. 20884, 20925, 20947, 21021, etc.

22 See VI, 170.

tent. Kaltenbrunner[23] identified it with the *Cum sacrosancta*, which is identical with the *Fideli ac devota*. The credit of solving this difficulty belongs also to Dr. Finke, who, in the MS above referred to, found the long lost constitution *Pro zelo fidei* and published it in his *Konzilienstudien*,[24] together with other till then unpublished documents relative to the history of the council. The question whether the document as we have it is complete in the form in which it was originally read in the council, as well as some other points connected with it, will be discussed in my comments on the decree, which I give as no. 32 in this series.

CANON I

Summary. The Holy Ghost proceeds eternally from the Father and the Son as from one principle and by one spiration.

Text. **We confess that the Holy Ghost proceeds eternally from the Father and the Son, not as from two principles, but as from one principle, not by two spirations but by one single spiration. This the Holy Roman Church, the mother and mistress of all the faithful, has hitherto professed, preached, and taught, this she firmly holds, preaches, professes, and teaches; this is also the true and unchangeable teaching of the orthodox fathers and of the Latin and Greek doctors. But, because some through ignorance of the aforesaid irrefutable truth have fallen into various errors, we, wishing to preclude such errors, with the approval of the holy council condemn and reject all who presume to deny that the Holy Ghost proceeds eternally from the Father and the Son, or rashly assert that the Holy Ghost proceeds from the Father and the Son as from two principles and not as from one.**[25]

Comment. As was noted above, this decree is not given in the list of the *Brevis nota*. Consequently the time of its publication was long a matter of conjecture. Hefele places it in the second session.[26] A greater enigma was the decree *Cum sacrosancta*, which for centuries was regarded as no longer extant and about which nothing was known except that it was published in the last session. With the aid of a Munich MS (thirteenth century), Dr. Finke was able to dispel the obscurity that for so long surrounded those supposedly two decrees. The MS contains among other things a brief summary of the first ten decrees published by Gregory X in this Council of Lyons. What is of interest to us here is the manner of their insertion. The first word or the first two words of each decree are

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23 *Mitteilungen aus dem Vatikan. Archiv*, I, 65.

24 Pages 113–16.

25 Denzinger, no. 460.

26 See VI, 170.

underlined with red ink, and the titles are rubricated and stand either above or beside the initial words. The list begins with the *Cum sacrosancta*, followed by a summary of its contents: *Spiritus sanctus a patre et filio tanquam ex uno principio et una spiratione procedit*. The title is given in the margin: *De sancta et individua (trinitate)*.[27] With this the old puzzle is solved. The *Fideli ac devota* is identical with the *Cum sacrosancta*. It was published in the last session and was the council's profession of faith in the procession of the Holy Ghost from the Father and the Son as from one principle and by one spiration against the errors of the Greeks. This profession of faith evidently had originally as incipit *Cum sacrosancta*, which was set aside by Gregory himself before he published the thirty-one constitutions and since then has begun with the words *Fideli ac devota*. The doctrine of this decree was again enunciated by the Council of Florence (1439–45) and by Eugene IV in his bull *Cantate Domino*.[28]

CANON 2

Summary. The law of the conclave and the provisions governing it in the election of a Roman pontiff.

Text. Where a greater danger exists, there without doubt a fuller deliberation is necessary. How grave are the losses resulting from a prolonged vacancy, and how full of dangers it is to the Roman Church, is shown by a prudent consideration of the past. Hence, a manifest reason urges us that, while we are engaged in the reformation of minor matters, we do not leave without a remedy for suitable reform those things that are more dangerous. Wherefore, all things that have been wisely enacted by our predecessors and especially by Alexander III [29] of happy memory, for putting an end to discord in the election of the Roman pontiff, remain absolutely unchanged, for from these we intend to eliminate nothing, but merely to supply in the present constitution what experience has proved to be wanting. With the approval of the holy council, therefore, we decree that when the pope dies in the city in which he resided with his curia, the cardinals who are present in that city must wait only ten days for their absent colleagues. On the expiration of that time, whether those absent have arrived or not, they shall assemble in the palace in which the pope lived. Each one may have only a single servant, either cleric or layman, as he may choose. Those, however, in regard to whom an evident necessity suggests an indulgence in this matter, we permit to have two, who also may be chosen by themselves. In this palace all must assemble in one room, without par-

[27] Pages 10 f.
[28] Denzinger, nos. 691, 703 f.
[29] Third Lateran Council, canon 1.

tition or tapestry, and live in common. This room, except for free access to a private chamber, must be locked on all sides, so that no one may go in or out. To no one shall admittance to the cardinals be granted, nor shall anyone be given opportunity to speak with them secretly. Visitors may not be admitted except those who with the consent of all the cardinals present may be called only for reasons connected with the matter of the election. And no one shall be allowed to send a message, either verbal or written, to the cardinals or to any one of them. Whoever acts contrary to this by sending a message, either verbal or written, or by speaking secretly with any of them, incurs *ipso facto* the sentence of excommunication. In the aforesaid room, however, a suitable window must be left open through which the necessary food may be conveniently served to the cardinals, but which must be so arranged that no one can enter thereby. But if, which God forbid, within three days from the time they enter the aforesaid room, the cardinals have not provided the Church with a pastor, they must for the period of five days immediately following, on each day, be content at their noon and evening meals with only one dish. If at the end of that time they have not provided a pastor, then they shall be served only bread, wine, and water till they have done so. During the time of the election the cardinals may receive nothing from the papal treasury, nor from any other revenue accruing to the Church from whatsoever source during the time of the vacancy; but during the vacancy everything must remain under the guardianship of him to whose care the treasury has been entrusted, to be preserved by him for the disposition of the future pontiff. Those, however, who have received something shall be bound from then on to abstain from accepting any revenues belonging to them, till they have made full satisfaction of the amounts thus received. That the cardinals may be free to hasten the election, they may not occupy themselves with any other business unless perchance an urgent necessity should arise imperiling the Church or its possessions, which all the cardinals recognize as demanding their attention. If any one of the aforesaid cardinals should not have entered the conclave, as above stated, or having entered, should leave the enclosure for any reason other than sickness, he is not to be admitted or readmitted, and the election is to proceed without him. But, if overcome by sickness it happens that one of them should leave the enclosure, his vote not being required, the election may proceed even during his illness. But if after recovery, or even before, he should wish to return and the election is not yet over, he may again be admitted to the conclave and take up the business where he finds it, observing the enclosure and partaking of the same food and drink as the rest. The same applies to those absent cardinals who arrive before the election is over, though after the expiration of the ten days.

But should it happen that the pope dies outside the city in which he resided with his curia, the cardinals are bound to assemble in the city in whose territory or district the pontiff died, unless perchance that city be under interdict or in open rebellion against the Roman Church, in which case they shall assemble in a neighboring city free from interdict and open rebellion. In this city also, the election being held in the episcopal residence or in some other house placed at the disposal of the cardinals, the same things are to be observed relative to the awaiting of the absent cardinals, to the common life, the enclosure, etc., which have been stated above in connection with the case when the pope dies in the city in which he resided with his curia.

Moreover, since it is of little advantage to make laws unless there be one to enforce them, we decree by adding that the rulers and officials of the city in which the election of the Roman pontiff is held, by our authority, with the approval of this council, and by the authority committed to them, see to it that each and all of the aforesaid prescriptions be fully and inviolably observed without fraud and deceit; nor shall they presume to impose upon the cardinals greater restrictions than are prescribed. That these things may be so observed, as soon as the death of the pope becomes known, let them (the rulers) take an oath in the presence of the clergy and the people of that city, called together especially for this purpose. If perchance, however, they commit fraud in the aforesaid matters or in matters connected with them, or do not diligently observe them, whatever may be their rank, condition or position, *omni cessante privilegio,* they incur *eo ipso* the sentence of excommunication and are branded forever as infamous; all dignities shall be forever denied them, nor shall they be admitted to any public office. We decree, moreover, that they be *ipso facto* deprived of all fiefs, properties, and everything else that they have received from the Roman Church or any other churches, so that these revert to the respective churches in their entirety, to be disposed of without opposition in a manner judged best by the administrators of those churches. The aforesaid city, moreover, is to be placed under interdict and deprived of pontifical dignity. But because, when inordinate passion warps the judgment or when some pledge leaves open only one course of action, the election comes to an end for the reason that the liberty of choice is destroyed, we, beseeching the cardinals through the bowels of the mercy of God, through the shedding of His precious blood, solemnly protest that, pondering attentively their immediate duty, since it is a question of the creation of a vicar of Jesus Christ, of a successor of St. Peter, of a ruler of the Universal Church, of a leader of the flock of the Lord, every disorder of private feeling being laid aside, and every pact, agreement, or obligation being severed, they do not consider their own interests or those of their friends, do not seek

the things that are their own or strive after private advantage, but with no one but God influencing their judgment, with minds unhampered and with a clear knowledge of their duty, let them, as far as is possible, by every effort and solicitude attend freely to the common good; keeping before their minds this only, that they speedily give to the Church a suitable head. Those, however, who act otherwise shall be subject to divine punishment, and their offense, unless they do severe penance on its account, is in no wise to be remitted. Moreover, we cassate and declare null and void all pacts, agreements, and obligations, whether they are bound by oath or any other *vinculum firmitatis,* so that no one is obliged to observe them in any way whatsoever, nor shall anyone fear from this transgression to have broken his word; on the contrary, to such a one is rather due great honor, since even the secular law testifies that transgressions of this kind are more acceptable to God than the observance of the oath.

But because the faithful should not so much put trust in a search for a pope as hope in the moving force of humble and devout prayer, we add to this decree that in all cities and in other prominent places, when word is first received of the certainty of the pontiff's death, the solemn obsequies having been celebrated for him by the clergy and laity, every day till it is known for certain that a head of the Church has been elected, prayers be offered to God, beseeching Him that He who brings about harmony in His realms, may so move the hearts of the cardinals toward an agreement in the election that a speedy, harmonious, and suitable choice, that will promote the salvation of souls and answer the needs of the whole world, will result from their unanimity. And that this salutary decree may not be neglected under cover of ignorance, we strictly command that patriarchs, archbishops, bishops, and other prelates of the churches, and others to whom has been entrusted the duty of preaching the word of God, in their sermons diligently exhort the clergy and laity, especially and frequently called together for this purpose, to resort often to prayer for a speedy and happy termination of so great a matter; and by the same authority we command them to exhort not only to frequent prayer but also to the observance of the fasts so far as circumstances will permit.

Comment. This is the celebrated constitution of Gregory X governing papal elections. If we consider the purpose Innocent II had in mind in convoking the Second Lateran Council, together with one or two later statements relative to some of its achievements, it seems very probable that in this council he restricted the entire papal election to the cardinals,[80] the

[80] Hefele-Leclercq, V, 737 f. Grauert, "Ein angebliches Papstwahlgesetz von 1139," in *Hist. Jahrbuch,* I (1880), 595–600; Wurm, *Die Papstwahl. Ihre Geschichte u. Gebräuche* (Köln, 1902), pp. 32 f.

reliquus clerus and *populus* losing whatever participation was left them by the decree of Nicholas II.[31] In the Third Lateran Council, Alexander III ruled that the pope was to be chosen by a two-thirds majority of the cardinals present, but he did not declare what was to be done in case such a majority could not be obtained.[32] Such a contingency arose on the death of Clement IV in 1268. The election that resulted in the choice of Gregory X had extended over a period of two years and nine months, when the authorities of Viterbo, weary of delay and hoping to force a decisive vote, confined the cardinals within the episcopal palace, where later on even their daily allowance of food was curtailed, thus hastening the election.[33] It was to avoid the recurrence of such a prolonged vacancy of the Holy See that Gregory published the law of the conclave.[34]

According to the *Brevis nota*, this decree, known from its incipit as *Ubi periculum*, was published by Gregory in the fifth session against the general and determined opposition of the cardinals, who considered its provisions too stringent. The Pope left nothing undone to break that opposition. Duranti, on the other hand, asserts that it was published after the dissolution of the council. Commenting on the words *et post* (*supra*), he says: *Hoc ideo dicit, nam quaedam ex eis* (scil., *constitutionibus*) *fuerunt post celebratum concilium promulgatae, videlicet illa de elect. c. ubi periculum*, etc. The fact that Duranti was present at the council, acted as the Pope's secretary, and drew up many of its decrees as he himself tells us, seems to be a very strong argument for the truth of his statement. The further fact that on this question the Pope had the cardinals against him, speaks likewise in his favor.[35] The conclusion, though not invested with absolute certainty, seems very plausible that the Pope, because of his inability to break the opposition of the cardinals in the council, published this constitution after the council had been dissolved. Perhaps this explains, too, why Adrian V found it so easy to suspend it, and John XXI a few months later to revoke it.[36]

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[31] C.1, D.XXIII. Hefele-Leclercq, IV, 1139–79. Grauert, *Hist. Jahrb.*, I, 502–94; Will, "Nikolaus II Dekret über d. Papstwahl," in *Hist.-polit. Blätter*, XLIX (1850), 466–74.

[32] Canon 1, *Licet de vitanda*.

[33] The expedient adopted by the authorities of Viterbo to hasten the election was not without precedent in the history of papal elections. When on the death of Gregory IX in 1241 the cardinals in Rome could not by reason of a hopeless division poll the two-thirds vote, the authorities and citizens of the city, to force the required majority, confined them in the Septizonium. Potthast, *Regesta*, p. 940. In a similar manner the cardinals were confined by the citizens of Naples after the death of Innocent IV in 1254. Baluzius, *Miscell.*, VII, 356, 405.

[34] Lector, *La Conclave*, Paris, 1894; Wurm, *Die Papstwahl*, pp. 101–19; Teeling, "The Development of the Conclave," in *The Dolphin*, 1908.

[35] *Röm. Quartalschrift*, XX (1906), 83 f.

[36] Potthast, pp. 1709, 1711; Mansi, XXIV, 133.

CANON 3

Summary. Appellants against the form of the election or against the persons of the electors or the one elected must express their objections in writing and declare on oath that they believe them to be true and can prove them. Any objection not so expressed renders the document worthless, unless new evidence should come to light.

Text. That we may, so far as possible, put an end to malice in the matter of elections, postulations, and ecclesiastical collations, lest a prolonged vacancy prove dangerous to the Churches, or the collation of dignities and other ecclesiastical benefices be delayed, we decree that if at times some object to elections, postulations, or collations by proposing a defect in the form of the election, postulation, or collation, or by finding fault with the persons of the electors or the one elected, or with the person of the one to whom a benefice is to be given or has already been given, and on this account happen to appeal, those who make the appeal must state in a public document or in letters and in the presence of an authorized person or persons who must bear witness to the truth in this matter, everything to which they intend to object in the matter of form or persons, and they must take an oath that they believe those things which they expressed in the document are true and that they can prove them. Otherwise the appellants as well as their adherents, if they object to something not expressed in such letters or documents, shall be denied an appeal, unless perchance something should afterward arise or evidence should come to hand to prove an old impediment, or some old impediment should come to the knowledge of the appellants of which they probably could have been ignorant and even were ignorant at the time the appeal was made. However, in the matter of ignorance and also in the matter of new evidence, they must take an oath, and to this oath must be added their statement to the effect that they believe they have sufficient evidence to prove them. Those things which Innocent IV of happy memory decreed against those who are unable to prove fully their charges against the form or the person, we wish to remain in force.

Comment. The purpose of this decree was to put an end to long drawn out judicial cases resulting from appeals often maliciously made in the matter of elections, postulations, and collations, which proved not only detrimental to the Church but were also a source of hardship to individuals. It requires that everything *quod vel electioni ipsae vel electo objicitur* be expressed in writing, not in a general way but definitely and *in specie cum omnibus qualitatibus et circumstantiis*, so that it is not enough to say that the *electus* is guilty either of homicide or perjury or is a *concubinarius*, but the crime or crimes charged against him must be specifically stated, otherwise an appeal shall be denied. The decree admits two cases in which

new objections may be made. First, in case of a new offense, as when the one elected should commit homicide after his election. Secondly, in case a hidden crime should come to light, whether it be one hitherto unknown or by way of new evidence respecting one already known.[37] In the latter case, the decree demands of the appellant an oath certifying to his ignorance at the time the appeal was made; for while ignorance may be presumed, yet such presumption is likely to afford the appellant an occasion for pleading ignorance maliciously. Finally, the Pope declares the decisions made by Innocent IV against those who are unable to prove their charges fully, to remain in force.[38]

CANON 4

Summary. Anyone elected is forbidden to administer the office either *per se* or *per alium*, in part or in its entirety, before his election has been confirmed.

Text. The blindness of avarice and the dishonesty of a perverse ambition having enslaved the minds of some, move them to such a degree of rashness that they endeavor to obtain by fraud things that they know are forbidden them by law. Some, elected to the government of Churches, though they are forbidden by law to assume the administration thereof before the confirmation of their election, manage to have that administration committed to them as procurators. Since, therefore, no favors must be shown to the perversities of men, we, wishing further to provide against this, decree by this general constitution that no one shall in the future presume to take over or meddle in, under the name of procurator or any other newly assumed title, the administration of a dignity to which he has been elected, either in its spiritualities or temporalities, *per se* or *per alium*, in part or in its entirety, before his election has been confirmed. All who act otherwise, we decree are *eo ipso* deprived of the right bestowed upon them by the election.[39]

CANON 5

Summary. The electors must as soon as possible make known the result of the election to the one elected, who must within one month state his intention, otherwise he loses the right thus acquired. After acceptance, he must within three months seek confirmation, or the election becomes *eo ipso* null.

Text. How injurious a vacancy is to the Churches, and how dangerous it usually is also to souls, not only is borne witness to by the

[37] Cf. the decree *Constitutionem* of Clement V, in Clem. c. 4, De elect., I, 3.
[38] C. 1, VI°, De elect., I, 6. That is, canon 1 (second series) of the First Council of Lyons.
[39] Cf. canon 26 of the Fourth Lateran Council. Also c. 17, X, De elect., I, 6.

laws but is shown also by experience. Wishing, therefore, by suitable remedies to put an end to prolonged vacancies, we ordain in this decree that when an election has been held in some Church, the electors see to it that its result be made known as soon as can conveniently be done to the person elected and his consent sought; the one elected, however, is bound to declare his intention within one month from the time of such notification. If on the expiration of that time he has failed to do so, he is *eo ipso* deprived of the right which came to him from the election, unless his position be such that he cannot by reason of a prohibition or some provision of the Apostolic See accept the election without the permission of his superior. In which case he or his electors must endeavor to seek and obtain permission from his superior with such haste as the presence or absence of the superior may require. Otherwise, if the time has expired, even with the allowance made for the presence or absence of the superior, and permission has not been obtained, then the electors are free to proceed to a new election. Moreover, the one elected must seek the confirmation of his election within three months from the time that he gave his consent. If without just cause he fails to do so during this time, the election becomes *eo ipso* null.

Comment. With reference to an election already held, this decree fixes three periods of time that have, so far as the writer is aware, received no expression in earlier ecclesiastical legislation. First, the result of an election must be made known to the one elected as soon as possible. This, because of its indefiniteness, was restricted to eight days by Nicholas III (1277–80) in his decree *Cupientes* (c. 16, VI°, § *Ceterum*, De elect., I, 6). If within this period, *postmodum commode poterunt*, they fail to do so, those who are culpable in this are not only excluded from participation in a new election (which would follow if the one elected should refuse to accept or should not be confirmed), but are also suspended for three years from the benefices which they hold in the Church *de cujus electione agitur*, and should they during this time by their boldness or under any pretext force their way into them, they shall *ipso jure* be perpetually deprived of them.

The one elected must signify his intention within one month from the time of notification, otherwise he forfeits his claim, unless he is a person who cannot give his consent without the permission of his superior. Should the absence of the superior render it impossible to fulfil this requirement within the period specified, then the time may be extended. This applies, of course, chiefly to religious.[40]

Confirmation must be sought within three months from the time that consent is given. Just impediments are illness, difficulties of traveling, es-

[40] Cf. the decree of Boniface VIII, *Si religiosus*, c. 27, VI°, De elect., I, 6.

pecially in time of war, etc. Nicholas III, in the constitution referred to above, fixed the time for confirmation in proportion to distance.[41]

CANON 6

Summary. He who knowingly votes for an unworthy person does not lose his right to vote, unless an election results.

Text. We decree that those who in an election knowingly vote for an unworthy person are not deprived of their right to vote, unless they so persist in voting thus that an election results from their votes; nevertheless, for knowingly voting for an unworthy person and thus acting against their conscience, they have good reason to fear the divine vengeance and the punishment of the Apostolic See according to the gravity of their offense.

CANON 7

Summary. He who has voted for the one elected or indorsed one elected by others, may not impugn him for his election except for good reasons afterwards.

Text. We decree that no one is permitted after he has voted for the one elected, or indorsed the one elected by others, to impugn him *super electione ipsa*, except for reasons that should afterward become known, or unless moral laxness, hitherto concealed, should now become evident, or any other hidden vice or defect of which one could have been ignorant, be revealed. Concerning such ignorance, however, he must take an oath.

CANON 8

Summary. In a divided election the minority or the one elected by it is forbidden to find fault with the majority.

Text. If at times it should happen in a divided election that one part of the voters is greater by double the number of the other part, we in the present decree forbid the minority or the one elected by it to do anything that will detract from the zeal, esteem, or authority of the majority. Such objections we permit only in case it is intended to show that the election of the majority is invalid.

CANON 9

Summary. The consideration of judicial or extra-judicial appeals in the matter of episcopal elections does not devolve upon the Apostolic See, unless they are put in writing and the probable cause is assigned which, when proved, may be regarded as legitimate.

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[41] Cf. the decree *Si postquam* of Boniface VIII, c. 33, VI°, De elect., I, 6.

Text. Though the constitution of our predecessor, Alexander IV of happy memory, with good reason places disputes arising from episcopal elections in the category of *causae majores,* and asserts that their examination in case of an appeal devolves upon the Apostolic See, we, however, wishing to restrain the indiscreet boldness of appellants and the immoderate frequency of appeals, take occasion in this general constitution to declare that when in the aforesaid elections or in other elections of dignities higher than the episcopal an extra-judicial appeal is made on manifestly frivolous grounds, the consideration of an appeal of this kind does not devolve upon the Apostolic See. But, when in cases of such elections an appeal is made *in judicio vel extra judicium,* let the matter be referred to the same See in writing, assigning the probable cause which, when proved, ought to be considered legitimate. Moreover, in all the aforesaid cases it is permissible for the parties to withdraw such appeals before they have been presented to the Apostolic See, *nulla tamen interveniente pravitate* (such as simony, violence, fear). When the appeal is withdrawn, the inferior judges must before all else diligently inquire whether dishonesty played any part in the withdrawal; and if they find that such was the case, they shall not inject themselves into the affair, but shall appoint for the said parties a suitable and fixed time in which they shall present themselves before the Apostolic See with all the acts and also documents relative to their own defense.[42]

CANON 10

Summary. If among the objections lodged against one to be promoted there is the *defectus scientiae vel personae,* the latter defects must first be inquired into, and if they be found groundless, the objectors are to be punished.

Text. If perchance among other points on which objections are made against the one elected or postulated or otherwise to be promoted to some dignity, there is put forth an *evidens scientiae vel alius personae defectus,* we decree that in the examination of the objections the following order be invariably observed: that the one to be promoted be before all else examined in regard to this *defectus scientiae vel personae,* the result of which will determine whether he is to be granted or denied an examination of the other objections. But, if the result of the aforesaid examination should show that such objection is without foundation, the objectors are to be absolutely

[42] Because of non-observance of this decree by some and the consequent confirmation and consecration of those elected without the required examination, Boniface VIII in 1299 supplemented it by adding that in the future such confirmations and consecrations and all juridical acts connected with them are invalid and that the metropolitan guilty of such non-observance loses *ipso facto* for one year his right of confirming and consecrating. C. 44, VI°, De elect., I, 6.

denied the prosecution of the case, and we decree that they be punished with the same measure of punishment that they would have received had they utterly failed to prove all their objections.

CANON 11

Summary. Those who oppress ecclesiastical persons, their relations, or the churches for no other reason than that the clerics did not elect him whose election they sought, are *ipso facto* excommunicated.

Text. All who presume to oppress clerics or any other ecclesiastical persons among whom it is the practice to hold elections in churches, monasteries, or other religious places, or their relatives, the churches, monasteries, or other places, by plundering either *per se* or *per alios* the benefices or other properties belonging to them, or by avenging themselves in other ways, for no other reason than that they (the clerics) refused to elect him whose election they sought or endeavored to bring about, are *ipso facto* excommunicated.

CANON 12

Summary. Those who usurp authority and appropriate revenues of vacant churches and monasteries, also clerics and monks abetting this, are *ipso facto* excommunicated. Clerics who do not resist such action shall be deprived of their revenues. Those who as founders or in virtue of custom claim such rights must see to it that such properties are taken care of.

Text. By a general constitution we decree that each and all, of howsoever exalted a dignity they may be, who shall in the future attempt to usurp regal rights (*regalia*), the office of advocate or *defensor* of churches, monasteries, or any other religious places, and thus presume to take possession of the goods (revenues) of vacant churches, monasteries, or their estates (*locorum*), clerics and monks also, and other persons attached to these churches and monasteries, who assist in bringing this about, are *eo ipso* excommunicated. Clerics who do not resist, as they should, those who do such things, we strictly forbid to receive anything from the revenues of the churches or their estates during the time that they permitted the aforesaid actions without due opposition. Those, however, who as founders of churches or of other places, or in virtue of an ancient custom lay claim to such rights, must prudently abstain from their abuse and see to it that their ministers also abstain from it, so that they do not appropriate revenues beyond those that accrue to such churches and monasteries during a vacancy; nor must they permit other properties over which they claim to have the guardianship to go to ruin, but must keep them in good condition.

Comment. This constitution was promulgated at the urgent request of the English and French bishops. By *regalia* (*jus regaliae, jus regale, droit de regale, Regalienrecht*) is understood the right claimed by many sovereigns during the Middle Ages and later to seize the revenues of vacant sees and abbeys, the election or appointment of whose bishops and abbots pertained to them, and to collate the benefices that became vacant during the vacancy of such a see, except those to which was attached the *cura animarum.* When and where the *jus regale* originated or was first exercised and on what ground temporal rulers claimed the right to these revenues, is a matter of dispute. It probably began with custom which had its beginnings in abuse, later developed into actual use, and terminated in tolerance and tacit privilege. In earlier times and in certain localities the guardianship of vacant churches was entrusted to the temporal rulers; later, however, this guardianship was replaced by *dominium* and *usus,* that is, usurpation. The right was exercised at first only during the actual vacancy of a see or abbey, but later was extended to the entire year following the death of the bishop or abbot, and not infrequently, for the sake of the revenues, it was extended far beyond that period. The present decree forbids under penalty of excommunication the extension of the *jus regale* over any diocese which at that time was exempt from it.[48]

CANON 13

Summary. The bestowal of a parochial church on one who has not attained the age of twenty-five years is null. He who has been given a charge of this kind must reside in the church of which he is rector, and within one year he must be promoted to the priesthood, otherwise he shall be deprived of the church committed to him.

Text. **Though the decree edited by our predecessor, Alexander III of happy memory, ordained among other things that no one may be assigned to the direction of a parochial church unless he has attained the age of twenty-five years and meets the requirements of knowledge and morals, and that the one so assigned, if, after being warned, he does not within the time specified by the canons receive priestly orders, shall be removed from that office, which is then to be conferred on another; because, however, many show themselves negligent in the observance of the aforesaid decree, we, wishing to replace their negligence by the observance of the law, enact in the present decree that no one may be appointed to the direction of a parochial church unless he fulfils the requirements of the law in regard to knowledge, morals, and age. We decree, moreover, that in the future the assignment of parochial churches to those who have**

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[48] Thomassin, *Vetus et nova ecclesiae disciplina,* III, lib. II, c. 54 f. Phillips, *Das Regalienrecht in Frankreich,* Halle, 1873; Makower, *Die Verfassung der Kirche v. England,* Berlin, 1894; Michelet, *Du droit de régale,* Ligugé, 1900.

not yet attained the age of twenty-five years is absolutely null. He who is given a charge of this kind, that he may the more diligently watch over his flock, must personally reside in the parochial church of which he is rector, and within a year from the time that he received the office he must see to it that he is promoted to the priesthood. If within this time he has not been so promoted, he shall by the authority of the present constitution, even without a previous warning, be deprived of the church committed to him. With regard to the obligation of residing in his parish, as was said above, the ordinary may, when good reasons exist for doing so, grant the favor of a dispensation for a time.

Comment. In this constitution Gregory X renews and amplifies canon 3 published by Alexander III in the Third Lateran Council.[44] The following points of difference between the two decrees may be noted: while the latter merely prohibits the assignment of a parochial church to one who has not yet attained the age of twenty-five years, the former declares such an assignment null and void. The latter leaves open the way of warning to those appointed to parochial churches to receive sacred orders within the time specified or be deprived of the office, while the former permits the deprivation without any previous warning. Finally, by the latter those who are negligent in procuring their promotion to the priesthood are deprived *per sententiam* of the churches committed to them, while by the former the deprivation is effected *ipso jure*. It often happened that men were appointed to the rectorship of parochial churches who had not been raised to the sacerdotal order, hence the present decree declares that they must procure such ordination within a year from the time that such a one received the office. To this time limit the Council of Trent adhered when it decreed that faculties granted for not being promoted (to orders) shall avail for a year only, except in the cases provided by law.[45] A celebrated decree in canon law on this point is the *Quum ex eo* of Boniface VIII, in which, after referring to the present decree, he ordained that bishops and their superiors may in the future freely dispense, *causa studiorum*, for a period of seven years, those who obtain or have obtained the direction of parochial churches from the obligation of being promoted to the priesthood; they are bound, however, to receive the subdiaconate within a year from the time of their appointment, otherwise they are *ipso facto* deprived of the office. During their absence the bishops are directed to provide competent vicars for those churches to attend to the *cura animarum*.[46] This decree of the Council of Lyons together with the

[44] C. 7, X, De elect., I, 6. Cf. also canon 26 of the Fourth Lateran Council.
[45] *Sess. VII, c. 12 de ref.*
[46] C. 34, VI°, De elect., I, 6. Potthast, no. 24634.

13th of the Third Lateran Council and the 30th of the Fourth Lateran Council, were in part renewed by the Council of Trent.[47]

As was stated in the introductory remarks, this and the following decree were drawn up and published by Gregory after the council.

CANON 14

Summary. Anyone not of legitimate age and not in priestly orders may not be given a parochial church *in commendam*, and when given, such grant may not extend beyond a period of six months.

Text. No one shall henceforth presume to give a parochial church *in commendam* to any person who has not yet attained the legitimate age (that is, twenty-five years) and has not received priestly orders. Nor may anyone have more than one such church, which should be granted only in case of great necessity or when evident advantage would accrue therefrom to the church. The grant of a church *in commendam* made in due form is not to extend beyond a period of six months. Whatever has been done otherwise concerning the bestowal of parochial churches *in commendam*, we decree to be *ipso jure* null.[48]

CANON 15

Summary. Those who knowingly ordain clerics of another diocese without the permission of the bishop of that diocese lose for one year the right of conferring orders.

Text. We decree that those who knowingly, or through affected ignorance or any other studied fabrication, presume to ordain clerics of another diocese without the permission of the superior of the *ordinandi*, are suspended for a year from the conferring of orders; those things that the laws decree against those so ordained are to remain in force. To the clerics of the dioceses of those so suspended, after their suspension has become known, we grant the liberty of receiving sacred orders in the meantime from neighboring bishops who are in good standing, even without the permission of their (suspended) ordinaries.[49]

CANON 16

Summary. Bigamists are deprived of all clerical privileges and are subject to the coercive power of the secular forum.

Text. Deciding in the present decree the question of an old quarrel, we declare that bigamists are stripped of every clerical privilege

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[47] *Sess. VII, c. 3 de ref.*

[48] Thomassin, II, lib. III, c. 10 f.

[49] Council of Trent, *Sess. XIV, c. 2*, and *Sess. XXIII, c. 8 de ref.*

and are subject to the coercive power of the secular forum, any custom to the contrary notwithstanding. Under penalty of anathema we forbid them to wear the tonsure and the clerical garb.[50]

CANON 17

Summary. Canons wishing to discontinue the divine offices must express the cause in a public document provided with their seals, which they must transmit to him against whom the cessation is declared, otherwise all revenues received during the cessation must be restored and satisfaction made to him against whom the cessation was directed. Should the cause be judged canonical, he who gave occasion for the cessation, must make satisfaction to the canons and to the church.

Text. If the canons should wish to abstain from the celebration of the divine offices, as in some churches they claim to have the right to do from custom or otherwise, before they proceed in any manner to such a cessation, they must indicate the cause of that cessation in a public document or in letters patent provided with their seals or certified by a reliable third party, and they must transmit it or them to him against whom they intend to declare the cessation. But if they declare the cessation with the omission of these provisions or if the cause which they assigned should prove to be not canonical, all the revenues which from and during the time of cessation they received from the church in which the cessation existed, they must restore. Those also which during the same time are due to them, they may not receive but are bound to give them to the church; and they are bound, moreover, to make satisfaction to him against whom they declared the cessation for the losses and injuries sustained. But if the cause should be judged canonical, he who gave occasion for the cessation shall be condemned to make satisfaction to the canons and to the church, whose offices were interrupted through his fault, to the amount which is to be determined by the judgment of the superior and which is to be applied to the needs of divine worship. We absolutely condemn that detestable abuse of those who, to intensify the cessation, with an irreverent boldness lay on the floor and place under nettles and thorns the crucifixes and pictures or statues of the Blessed Virgin and the saints; and we strictly forbid that such things be done in the future. We decree that on those who do the contrary a punishment of such severity be imposed that it will restrain others from perpetrating such things.

Comment. This decree deals with the *cessatio a divinis*, which is an ecclesiastical prohibition imposed primarily on clerics, who are thereby forbidden to celebrate the divine offices and to administer the sacraments

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[50] What the old quarrel was about is not clear. From the text of the decree it seems to have been in reference to the *privilegium fori*. The decree, of course, applies to secular clerics in minor orders.

in certain places. In its effects it is similar to a local interdict. It is not a censure, and its application in an individual case for a certain purpose is left to the judgment of the superior, who also determines its effects and defines its conditions. Ultimately it is a manifestation of sorrow and a sort of reparation for a grave wrong or injustice done to a church or its clergy, chiefly by a secular ruler or his ministers. That is the explanation of the last part of the decree, which forbids anyone to remove from the church crucifixes, relics, pictures, and statues, and conceal them under nettles and thorns. *De jure communi* canons have not the authority to impose the *cessatio a divinis*, though in some localities they claimed it *ex consuetudine vel alias*, as the decree says, that is, *ex privilegio papae* or *ex concessione episcopi* or *ex constitutione synodali* or, finally, *ex praescriptione legitima*. By canons here is understood the chapter of a cathedral, collegiate, and conventual church. In imposing the *cessatio* the consent of the majority of the chapter was required. Innocent III in the Fourth Lateran Council (canon 7) required for such a cessation a manifest and reasonable cause. The present decree goes a step farther and ordains that that cause must be indicated in a public document properly sealed and transmitted to him against whom the action was directed.[51]

CANON 18

Summary. Those who hold several benefices with the *cura animarum* attached, must within a time specified by the bishops exhibit their dispensations, otherwise such benefices shall be conferred on others. If the dispensations are satisfactory, the possessor is not to be molested. Ordinaries must see to it that in such churches the *cura animarum* is not neglected. In case of a doubtful dispensation, recourse must be had to the Apostolic See.

Text. Ordinaries must compel their subordinates who hold several dignities or churches to which is attached the *cura animarum*, or only one dignity with another benefice to which is annexed a like *cura*, to exhibit within the time specified by them the dispensations on the authority of which they claim to hold canonically such churches or dignities. If, *justo impedimento cessante*, within the time prescribed no dispensation has been exhibited, then the benefices and dignities which they hold evidently without a dispensation and consequently illicitly, are to be freely conferred upon competent persons by those whose duty it is to confer them. If, on the other hand, the dispensation exhibited appears satisfactory, the possessor is not to be disturbed in the possession of the benefices that he has obtained in a canonical manner. Let the ordinary see to it, however, that in those churches and dignities the *cura animarum* is not neglected or the

[51] Due to an abuse of the *cessatio a divinis* by the canons, Boniface VIII in his decree *Quamvis super* (c. 8, VI°, De off. ordinarii, I, 16) restricted its application.

beneficés defrauded of the services due to them. In case the dispensation exhibited is doubtful, recourse must be had to the Apostolic See. In bestowing dignities and other benefices to which the *cura animarum* is annexed, let ordinaries use the utmost care and not presume to confer a dignity or another benefice to which is annexed a like *cura* upon anyone already holding several such, until a satisfactory dispensation is shown them in regard to those already obtained. But even if the dispensation is shown, the ordinary may not then confer another benefice unless the one seeking a new dignity or benefice with the *cura animarum* annexed has a dispensation for it, or unless he freely resigns those that he already holds. Otherwise the collation of such dignities and benefices is entirely out of the question.[52]

CANON 19

Summary. All advocates in ecclesiastical causes must declare on oath that they will serve their clients to the best of their ability, and withdraw from the case when they learn that the cause which they in good faith undertook to defend is an unjust one. Procurators must take a similar oath. This oath the advocates and procurators must renew every year. No advocate may receive for salary more than twenty and no procurator more than twelve Tours pounds.

Text. It seems to us imperative that something should be done to correct the unwarranted protraction of lawsuits, which we hope can be efficaciously secured if by suitable means we direct in this matter those who have charge of judicial affairs. Since, therefore, those things that have been provided by legal sanction for the protection of the litigants in this matter seem to have fallen into desuetude, we in the present constitution renew that sanction with some additions and modifications, and decree that each and all who hold the office of advocate in the ecclesiastical forum or at the Apostolic See or elsewhere, must take an oath on the Gospels that in all ecclesiastical causes and others to be examined in the same forum, of which they have assumed or will assume the defense, they will use all their power and influence to secure for their clients what they consider true and just, neglecting nothing in this matter so far as is possible; and if in the course of the trial it should become known to them that the cause which they accepted in good faith is an unjust one, they will no longer conduct its defense but will absolutely withdraw from it. The remaining things pertaining to this matter which have already received legal sanction, are to be inviolably observed. Procurators must bind themselves by similar oath, and this oath both the advocates and procurators shall be bound to renew every year

[52] Third Lateran Council, canon 13; Fourth Lateran Council, canon 28; Council of Trent, *Sess. VII, c. 4* and *Sess. XXIV, c. 17 de ref.*

in the tribunal in which they took the office. Those who come to the Apostolic See or to the curia of any ecclesiastical tribunal, in which they have not yet taken such an oath, in every particular case in which they are about to undertake the defense or assume the office of procurator, they must in each case take a similar oath at the beginning of the proceedings. Advocates and procurators who refuse to take the oath in accordance with the aforesaid provision, are forbidden the exercise of their office as long as their unwillingness continues. However, if they have presumed to violate the oath taken, besides the guilt of perjury, they shall, as counselors who knowingly support an iniquitous cause, incur the divine malediction and ours, from which they are not to be absolved until they have restored double the amount they received from the unjust use of their office, and over and above this they shall be bound to make satisfaction for the losses sustained by the parties through their unjust ministrations. Moreover, lest cupidity should impel some to despise these salutary statutes, we strictly forbid that an advocate presume to receive in any cause whatsoever as salary or even under color of a bonus more than twenty and a procurator more than twelve Tours pounds (*libras Turonenses*). Those who receive more acquire no *dominium* over that which exceeds the aforesaid amount, but are bound to its full restitution. And none of those things which we said they are bound to restore, may be given back to them in violation of the present constitution. Advocates violating the provisions of the present decree in such manner, are to be suspended from their office for a period of three years. Procurators, on the other hand, shall be denied permission to exercise their office in a judicial tribunal.

CANON 20

Summary. Absolution from censure obtained by force is null and those who do so obtain absolution are excommunicated.

Text. Absolution from, or revocation of, the sentence of excommunication, suspension, or interdict, extorted or obtained by force or fear, we declare by the authority of this constitution null and void. But that the impudence of violence may not go unpunished, we decree that those who by force or fear extort such an absolution or revocation, are excommunicated.

CANON 21

Summary. If within a month from the time that they become vacant the pope does not fill benefices in the Roman curia, they to whom such collation pertains may do so.

Text. The statute of our predecessor Clement IV of happy memory, that vacant dignities and benefices in the Roman curia are not to

be filled by anyone except the Roman pontiff, we decree to be so modified that they to whom the collation of those dignities and benefices belongs, the aforesaid decree notwithstanding, may themselves, only after a month from the day that they become vacant, confer them; or in case of their absence at a great distance, they may be conferred by the vicars general residing in their dioceses, to whom this may be canonically entrusted.

Comment. The decree *Licet ecclesiarum* of Clement IV, of which the present one is a modification, was published August 27, 1265, and is the first explicit reservation by the pope to himself of the collation of all dignities and benefices that in the future become vacant *apud sedem apostolicam.* Clement tells us that he based his action on an ancient custom. That is not easy to understand in connection with what follows unless we suppose that the custom was not firmly established or was disregarded. Of such an ancient custom we have no record. No trace of one is found in the Decretals of Gregory IX, and between Gregory IX and Clement IV there were four pontificates, covering a period of only twenty-two years.[53] At any rate, what prompted Clement to take this step was his desire to defeat the shrewdness of the bishops, whose practice it was to have in the Roman curia their procurators or representatives who, as soon as some benefice or dignity became vacant, collated it and thus often forestalled such collation by the pope, whom Clement regarded by reason of his office as the sole possessor of that right. Certain it is that he was not actuated in this matter by financial motives. Owing to the dissensions and abuses that arose during the long vacancy of the Holy See following the death of Clement IV, the bishops in the course of the council petitioned Gregory to revoke the Clementine decree. The Pope, however, proved unyielding in the matter and merely modified it to the extent that if the pope does not fill the vacant benefices in the Curia within a month from the time that they become vacant, then this may be done by the bishops, or in their absence by the vicars general residing in their dioceses.[54]

CANON 22

Summary. Prelates are forbidden to surrender the churches or their rights to laymen without the consent of their chapter and without the permission of the Apostolic See. All contracts thus far made without such consent and permission are null. Those who act otherwise are suspended for three years. Laymen who have compelled clerics to yield to such subjection and do not return what they have acquired, are excommunicated.

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[53] Thomassin, II, lib. I, c. 48, nos. 2 and 9.

[54] Göller, *Die Einnahmen der apost. Kammer unter Joh. XXII* (1910), 92 f.

Text. We forbid all prelates to transfer or surrender to laymen the churches committed to them, their immovable possessions or their rights without the consent of their chapter and without the special permission of the Apostolic See. They do not hand over these properties and rights in emphyteusis, nor do they alienate them in any other way permitted by law, but they declare that they receive and hold them from laymen as from superiors, the laymen on the other hand holding them *in perpetuum* or at least for a long time as protectors, that is, as patrons or advocates. All contracts, even if bound by oath, penalty, or any other constraining device, which without such permission and consent have been made in regard to such alienations, whatever their result has been, we decree to be absolutely null and void to the extent that they confer no rights and furnish no ground for prescription. We decree, moreover, that prelates who act otherwise, and clerics who, knowing that the aforesaid prohibition has been transgressed, neglect to make it known to the superior, are suspended for a period of three years, the former from office and administration, the latter from the *perceptio beneficiorum* in whose oppression they were so instrumental. Laymen who in the past have compelled prelates or chapters or other ecclesiastical persons to yield to subjection of this kind, unless after an admonition they return what they obtained through force and fear, and restore to the churches and ecclesiastical possessions freedom from lay control, those also who in the future should compel prelates or other ecclesiastical persons to do such things, whatever their state or condition may be, shall be bound by the sentence of excommunication. In contracts thus far made with the required permission and consent, and in those that happen to be made in the future, laymen are not to claim anything beyond what is permitted them by the contracts or by the law governing them. Those who act otherwise, unless, after a legal warning, they cease from such usurpation and restore the things illegally taken, shall *eo ipso* incur excommunication, and if necessary their lands shall be placed under ecclesiastical interdict.

Comment. This decree is directed against the practice, a not uncommon one in the Middle Ages, of bishops and prelates who, in order to protect the possessions of their churches and the churches themselves against predatory attacks and complete confiscation, chose neighboring persons of high rank as defenders, giving them in return, since without it they refused the desired protection, the *dominium directum* over these possessions and retaining for themselves only the usufructuary rights.[55]

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[55] Fourth Lateran Council, canon 45. Kober, *Die Suspension*, pp. 331–33. The word "avoher" in the Latin text is thus explained by Duranti in his commentary (cf. note 16), fol. 76ᵛ: "vulgare est Gallicorum; cum enim aliquis opprimebatur ab aliquibus nec

CANON 23

Summary. Religious orders are not to be multiplied. Mendicant orders founded since 1215 and not approved by the pope are abolished; those approved may not receive any more to profession, or acquire new houses, or preach to outsiders, or hear their confessions or bury them. Those violating these provisions are excommunicated. This constitution does not apply to the Dominicans, Franciscans, Carmelites, and Augustinians. Members of orders to which this constitution applies may enter approved orders.

Text. The General Council (Fourth Lateran) to avoid confusion wisely prohibited a too great diversity of religious orders. But because not only the troublesome clamor of applicants has by pressure subsequently elicited their multiplication, but also because the boldness of some of the different orders, particularly the mendicants, whose foundation has not yet received approval, has brought about an almost unbridled multitude, we by a renewal of that constitution absolutely forbid anyone in the future to establish a new order or to take the habit of a new order. We forever prohibit and abolish all orders and mendicant orders founded after the said council, which have not received the confirmation of the Apostolic See. Those founded after that council and confirmed by the Apostolic See, who by virtue of their profession, rule, or constitutions are dependent for their livelihood on the alms of the public, we decree that they observe the following rule: Those who have already made profession in them may remain in them if they wish, but these orders may not henceforth receive any more to profession, nor may they acquire new houses or other places, or dispose of houses or places that they have without special permission of the Apostolic See. These things we reserve to the disposition of the same See, to be used in aid of the Holy Land, of the poor, or other pious uses through the ordinaries of the localities or those to whom the same See shall entrust them. Any violation of these provisions invalidates the acts so performed, and those guilty shall incur excommunication. Members of these orders are absolutely forbidden to preach to outsiders, to hear their confessions, or to bury them. The present constitution, however, we do not wish to be extended to the Order of Preachers and Friars Minor, whose eminent usefulness to the universal Church is apparent. The Order of Carmel and the Hermits of St. Augustine whose foundations antedate the aforesaid council, we permit to continue *in suo statu* till we ordain otherwise; for it is our intention to provide for

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poterat bene defendere contra illos, advocabat regem vel principem, ut per eum ab aliorum oppressionibus tueretur et tali autem advocatione rex ille vel princeps dicebat sibi jus acquiri et se semper superiorem dominum esse in re propter quam advocatio facta erat."

these as well as for all the rest, even the non-mendicant orders, such measures as we may deem expedient for the salvation of souls and for their own welfare. To the members of the orders to which the present constitution applies, we grant general permission to enter other approved orders. So, however, that no order as a whole and no conventual community as a whole may transfer or incorporate itself and its possessions in another order or convent, unless it has obtained for this purpose the special permission of the Apostolic See.

Comment. The background of this decree forms a long story. Its purpose was to condemn to immediate or gradual extinction all religious orders that had been founded in contravention of the decree (canon 13) of the Fourth Lateran Council, which forbade the institution of new orders. All orders established since that council and not approved by the Apostolic See faced immediate dissolution. Others also so established and approved were forbidden to receive new members. In reference to the Order of Carmel and the Hermits of St. Augustine the Pope reserved decision. Many bishops refused to recognize these two orders in the belief that they were established in violation of the Lateran decree. Gregory died before he could carry out his intention in regard to them. Boniface VIII showed them special favor, so much so that when he inserted this decree in the *Liber sextus*, he replaced the passage, *in suo statu manere concedimus, donec de ipsis fuerit aliter ordinatum*, by the words, *in solido statu volumus permanere*. A marginal annotator tells us that it was the intention of Gregory to abolish all mendicant orders except the Dominicans and Franciscans, and of the non-mendicant orders to retain only three, namely, the Cistercians, Benedictines, and the Templars and Hospitallers, which two he intended to unite.[56]

But with all that the bishops had gained so far in the way of elimination of some orders and restriction of others, they fought for more. Many of them demanded the complete withdrawal of the privileges of all orders that were permitted to function, especially those of the Dominicans and Franciscans. The bitter conflict between the secular and regular clergy, particularly the two orders just mentioned, was at the time of this council of Lyons already an old one, but it still raged with unabated bitterness and vigor, and there can scarcely be any doubt that most, or at least many of the recommendations for reform handed in by the bishops in response to the Pope's request suggested or advocated such a withdrawal. This was the case in the only known episcopal response that has come down to us, that of Bishop Bruno of Olmütz.[57] Both sides marshaled and threw into the debates their best equipped forces, but in view of the services that the

[56] Catalani, *Sacr. concilia oecumenica* IV, 1116. Mansi, XXIV, 134.
[57] Hefele-Leclercq, VI, 165 f.

two great mendicant orders had rendered and were rendering to the Church, Gregory could not be persuaded to decide against them.[58]

CANON 24

Summary. Those who in the matter of procurations act in contravention of the provisions of Innocent IV, shall be bound to restore double of the amount received.

Text. The boldness of perverse men demands that we do not content ourselves with the prohibition of offenses, but also impose punishment on the offenders. That the constitution [59] of our predecessor Innocent IV of happy memory, forbidding visitors and their attendants to receive procurations in money and also to receive gifts, which it is said many disregard, may be inviolably observed, we have decided to aid its observance by adding a penalty for its violation, decreeing that each and all who, in place of the procurations due them by reason of visitation, presume to demand money, or even accept it when willingly offered, or otherwise violate that constitution by receiving gifts, or without having actually made a visitation, to receive procurations in the form of victuals or other articles, shall be bound to restore within one month double of what they received to the church from which it was accepted; otherwise patriarchs, archbishops, and bishops, deferring to restore to the church double of what they received beyond the time above specified, are *ipso facto* forbidden to enter a church.[60] Visitors delegated by them are *ipso facto* suspended from office and benefice till they have made plenary satisfaction by restoring double the amount to the churches from which it was received, even if the original contributors should offer a reduction in the amount to be restored.

Comment. Bishops are obliged to make personally once a year a canonical visitation of their dioceses, or if legally impeded to entrust this duty

[58] For a brief outline of the conflict between the regular and secular clergy, cf. comments on canon 2 of the Council of Vienne.

[59] C. 1, VI° (§ 5), De cens., III, 20.

[60] *Ingressum sibi ecclesiae sentiant interdictum,* that is, they are forbidden to enter a church, to celebrate the divine offices therein, or even to assist passively at the services. This penalty does not come under the head of suspension, unless for the sake of giving it a name, we understand it in a very broad sense. It is rather a form of punishment that is distinct from and independent of every other form. Suspension can be imposed on clerics only, whereas the *interdictum ab ingressu ecclesiae* can be imposed also on laymen (c. 15, C. XXXIII, q. 2). Moreover, suspension deprives a cleric either totally or partially of the exercise of the power of orders, office, or benefice, but it does not deprive him of those rights that he has in common with the laity; it does not exclude him from the reception of the sacraments, from the passive participation of divine services, etc., whereas the *interdictum ab ingressu ecclesiae* deprives him of both. Sometimes this prohibition is called *suspensio* (c. ult. VI°, De off. ordinarii, I, 16), but that does not mean that they are alike in penal content. Kober, *Die Suspension,* pp. 237 ff.

to competent diocesan clerics.[61] Archdeacons also had the right to make such visitations of the churches under their jurisdiction.[62] The canon law authorized them to claim from the churches visited, except from those that were notoriously poor, the *procuratio canonica*, that is, the sustenance necessary for themselves and their attendants in the course of such visitations. Till the end of the thirteenth century this was or was supposed to have been provided in kind.[63] At the same time they were warned to keep their demands within the limits of discretion and not to oppress the people.[64] The above mentioned decree of Innocent IV was directed against abuses, but practically it went no farther than merely prohibiting them. Visitors are not to demand more than the law permits. Neither they nor their attendants may accept or demand money or any gifts whatsoever in lieu of provisions. Those who act in contravention of this shall incur the *maledictio divina*, which may not be removed till they have restored double of the amount received or demanded. The threatened penalty meant no more than that the prohibition bound *sub peccato mortali*, and was not likely therefore to put an end to abuses. Under these circumstances Gregory X in the present decree renewed the constitution of Innocent and added penalties to enforce its observance.[65]

CANON 25

Summary. The church is the house of God. Hence all wilful disturbance, all idle talk and gossip, all foul and profane language must be excluded therefrom. In them and in their cemeteries the noises of fairs, markets, and secular tribunals must be silent. Whatever disturbs the divine offices or offends the divine Majesty, must be banished.

***Text*. Holiness belongs to the house of God, in order that His place which has been established in peace may have a peaceful worship with suitable respect. Therefore, let entrance to the churches be humble and devout. Let there be in them silent prayer, pleasing to God, undisturbing to those contemplating, and instructive and refreshing to those meditating. Those assembling there, let them extol by a show of special reverence that name which is above every name, than which there is no other under heaven given to men, in which**

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[61] C. 11, C. X, q. 1; c. 15, X, De off. jud. ord., I, 31; Council of Trent, *Sess. XXIV, c. 3 de ref.*

[62] C. 6, X, De off. archidiac., I, 23.

[63] C. 3, VI°, De cens., III, 20. Cf. also c. un., Extrav. comm., De cens., III, 10.

[64] Canons 4 and 33 of the Third and Fourth Lateran Councils respectively.

[65] Thomassin, *Vetus et nova ecclesiae disciplina*, III, lib. II, c. 32 f. Göller, *Die Einnahmen d. apost. Kammer unter Joh. XXII*. Duranti, fol. 83, says in regard to that clause in the text: *visitationis officio non impenso*, "respicit precedentia ac sequentia, punitur ergo hic, qui procurationes recipit in pecunia vel etiam aliis a locis non visitatis et haec fuit mens d. papae, prout saepe ab ipso audivi, licet littera ista confuse loquatur."

those believing shall be saved, the name of Jesus Christ, who saved His people from their sins; and what is written, that "in the name of Jesus every knee should bow," let all carry out in themselves, especially during the celebration of holy mass, and whensoever that name comes to mind let them bend the knees of the heart, which reverence they may manifest by an inclination of the head. Let the sacred solemnities in the churches be assisted at with attentive hearts and with minds engaged in devout prayer. Where the divine services are celebrated with peace and quiet, let no one create disturbance, excite commotion, or commit violence. Let all deliberations, assemblies, and discussions of societies cease. Let all idle talk and gossip, and above all foul and profane language, find no place there. Finally, whatever other things might disturb the divine offices or offend the eyes of the divine Majesty, let them be banished from the churches, lest where the forgiveness of sins is to be sought, there may be given an occasion of sinning, or sin may be actually committed. In the churches and in the cemeteries let business matters and especially fairs or markets be excluded, and let the noise of secular tribunals be silent in them. Let no cause and especially no criminal cause be conducted therein by laymen, nor let trials of laymen take place there. We ask the ordinaries to see to it that these things are observed. Let them recommend the things that are proper and restrain by the authority of this decree those that are forbidden. They may also appoint in the churches men who are diligent and competent for bringing about the observance of the things aforesaid. Moreover, trials conducted by secular judges and especially the sentences pronounced in those places, let them be null and void. Those who insolently despise the aforesaid prohibitions, besides the punishment of ordinaries and of those appointed by them, have reason to fear the severity of the divine vengeance and ours, until they have confessed their guilt and firmly resolved to abstain from similar acts in the future.[66]

CANON 26

Summary. Associations and individuals are forbidden to permit strangers to practice usury within the limits of their territory; they are to expel all such usurers within three months. Nor shall anyone under whatever title lease them houses for this purpose under penalty of suspension, excommunication, and interdict.

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[66] This decree formed the beginning of the Confraternity of the Holy Name. Shortly after the council Gregory in the constitution *Nuper in concilio* (Ripoll, *Bullarium Ord. Praed.*, I, 524) chose the Dominicans to preach the devotion. John of Vercelli, the general of the order, at once communicated the Pope's wish to the provincials of the various provinces (*Litterae Encyclicae Mag. Ord. Praed.*, ed. Reichert, Romae, 1900, p. 95). To give permanency to the devotion and the more effectively to realize its purpose, it was decided to establish societies under the title of the Holy Name of Jesus. Mansi, XXIV, 134.

Text. Desiring to check the canker of usury which devours souls and exhausts resources, we command that the constitution of the Lateran Council against usurers be inviolably observed under threat of divine malediction. And since the fewer the opportunities given to usurers the more easily is the practice of usury destroyed, we decree by this constitution that no community or association, nor any individual, whatever may be his dignity, condition, or state, shall permit strangers and non-residents of their estates, who publicly practice or wish to practice usury, to conduct offices for this purpose on their territory or to retain those that they already have, or otherwise give them support, but they shall expel all known usurers from their territory within three months and shall not permit their return in the future. No one shall lease or under any other title whatsoever let them have the use of houses for the purpose of practicing usury. Those who do the contrary, if they be ecclesiastical persons, patriarchs, archbishops, or bishops, incur *ipso facto* suspension; individuals of lower rank incur *ipso facto* excommunication, and communities and other associations are *ipso facto* interdicted. If through obstinacy and for a month they despise these censures, their territories shall be placed and remain under interdict so long as usurers reside therein. If, however, they be laymen, *omni privilegio cessante*, let their ordinaries restrain them from such excesses by ecclesiastical censure.

Comment. The reference is to canon 25 of the Third Lateran Council, which denies to notorious usurers communion of the altar and Christian burial if they die in the sin of usury. Those who should accept their offerings or give them Christian burial are suspended till they have made full satisfaction. Usury was one of the outstanding evils of the Middle Ages. In the present decree, besides renewing the decision of Alexander III in the above mentioned council, the Pope directs a series of penalties against those who support or encourage the evil. Patriarchs, archbishops, and bishops incur suspension, ecclesiastical persons of lower rank are excommunicated, ecclesiastical communities and associations are interdicted, while laymen and secular associations are to be penalized with censure by their ordinaries. The suspension incurred by the bishops and their hierarchical superiors is *ab officio et beneficio*, for the decree makes no restrictions and this interpretation is in line, moreover, with the imposition of the severest ecclesiastical penalties, excommunication and interdict, on other offenders. The censures are incurred only in the case of public usurers, that is, when houses are leased or support given to men who are known to be usurers and who will practice their profession openly and publicly. The lease of a house or the support given to one who practices usury secretly, a circum-

stance unknown to those who give such support, the decree does not consider. Moreover, the prohibition extends only to foreigners; first, because these were the most oppressive, and secondly, the money that they thus illegally acquired was removed to foreign countries. Besides, with the foreign element out of the way it was easier to control local offenders.[67]

CANON 27

Summary. Though notorious usurers have made provision for restitution in their testaments, they shall nevertheless be denied Christian burial until they have actually made it, at least in the form outlined in this decree. No one may hear their confession or give them absolution unless they have made full satisfaction. Otherwise those who give them Christian burial incur the penalties prescribed by the Third Lateran Council for such offenders.

Text. Even though notorious usurers have made definite provision in their testaments regarding restitution in the matter of interest illegally taken, ecclesiastical burial shall nevertheless be denied them till plenary satisfaction has been made so far as their resources permit. This restitution is to be made to those to whom it is due, if they are present; in case of absence, to those who are authorized to act for them. If these also are absent, it is to be made to the ordinary of the locality, or to his vicar, or to the testator's parish priest, in the presence of witnesses residing in that parish (in which case the ordinary, vicar, and rector may by the authority of this constitution receive in their name and in the presence of witnesses a pledge on which legal action may be based), or at the request of the ordinary a pledge concerning the restitution to be made may be given to a competent notary. If the amount of usury received is known, this is always to be expressed in the aforesaid pledge, otherwise the amount is to be determined by him who receives the pledge. However, he may not knowingly fix this amount at a lower figure than what he believes to be the correct one, otherwise he shall be bound to make satisfaction for the remainder. All religious and others who dare in contravention of this constitution to admit notorious usurers to ecclesiastical burial, we decree that they incur the penalty prescribed by the (Third) Lateran Council (canon 25) against usurers. No one may serve as a witness to testaments of notorious usurers, and no one may hear their confession or give them absolution, unless they make full restitution or give a satisfactory pledge to that effect in so far as their resources permit. Testaments of notorious usurers that make no reference to this point, are null and void.[68]

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[67] Kober, *Die Suspension*, pp. 348 f.

[68] According to Duranti, this decree was in part directed against the Florentine merchants.

CANON 28

Summary. Reprisals may not be granted against or extended to ecclesiastics. Those who act contrary to this and do not revoke their action within a month incur, if individuals, excommunication, if a community, interdict.

Text. Though reprisals (*pignorationes*, more commonly, *represaliae*), in which one person or party is made to bear a burden or penalty in place of another, have already been prohibited by civil enactments as contrary to law and natural justice, that the prohibition, however, to apply them to ecclesiastical persons may be the more feared the more they are in a special manner checked, we strictly forbid that reprisals be granted against the aforesaid persons or their possessions, or, howsoever generally granted under pretext of custom, which we regard rather as an abuse, that those granted be carried into effect against them. Those who act contrary to this by granting and executing reprisals against such persons, unless they revoke such action within a month from the time of their concession, if they are individual persons, incur *ipso facto* the sentence of excommunication, if a community, it is *ipso facto* under interdict.

Comment. A marginal annotator remarks: *Quando aliud pro alio exigitur, appellatur represalia;*[69] *ut quando est guerra inter duos principes et fiunt treugae* (*truce*), *si aliquis subditus unius principis delinquat et non possit haberi justitia de eo apud suum dominum, princeps alterius dabit ei represalias, id est, dabit ei potestatem accipiendi aliquem de illa societate seu patria.* Reprisals were frequently resorted to during the eleventh and twelfth centuries, particularly in the wars between England and France. The present decree contains two prohibitions, namely, the concession of reprisals, which pertains to superiors, and their extension or execution, which pertains to inferiors, against ecclesiastics and their possessions. If reprisals are granted in a general way against an entire province or city, they are not to include in their execution the ecclesiastics of that province or city.[70] A synod of Avignon (1279) in canon 2 decreed that those who in reprisal seize men, or the animals of ecclesiastics and laymen, or anything else, incur, together with their accomplices and abetters, *ipso facto* the sentence of excommunication, and they are to be denounced with the ringing of bells and lighted candles in the churches of the diocese or the city in which the crime was committed, on all Sundays and festival days. The synod further decreed that any city, town, castle, or locality receiving or harboring anybody or anything so seized, is *ipso facto* under interdict.[71] A synod of Paris (1314) in canon 6 renewed this decree of Lyons.[72]

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[69] Du Cange, Glossarium, s.v. "represaliae."
[70] Catalani, *Sacr. concilia oecumenica,* IV, 132.
[71] Mansi, XXIV, 234.
[72] *Id.,* XXV, 533.

CANON 29

Summary. The admonition against intercourse with those excommunicated is canonical only when it contains the name of the one warned. There must be an interval of some days between the admonitions, unless necessity dictates otherwise.

Text. To put an end to every ambiguity in regard to the constitution of our predecessor Innocent IV [78] of happy memory, which declares that those who, in any way by which minor excommunication is incurred, hold intercourse with those excommunicated, do not incur major excommunication unless previously warned, decreeing that the sentence of excommunication promulgated in any other way does not bind, we decree that in such a case the warning is canonical only when, other things being legally observed, it expresses the names of those who are warned. We decree also that in the matter of admonitions, which the law declares must be previously made that the sentence of excommunication may be canonically promulgated, the judges, whether they issue three admonitions or one for all, must observe an interval of some days between them, unless necessity of the case should dictate otherwise.

CANON 30

Summary. Absolution *ad cautelam* does not apply to a general interdict.

Text. We decree that absolution *ad cautelam* does not apply to a general interdict promulgated against cities, castles, districts, or provinces.

CANON 31

Summary. Those who give permission to injure or oppress anyone for imposing the sentence of excommunication, suspension or interdict, incur *ipso facto* excommunication, and those remaining under that censure for two months must obtain absolution through the Apostolic See.

Text. Whoever, because the sentence of excommunication, suspension, or interdict has been promulgated against a king, prince, baron, nobleman, magistrate, or their ministers, or others, should give permission to anyone to kill, capture, or otherwise oppress in their persons or possessions or their relatives, those who pronounced such sentences or instigated their pronouncement, those also who observe them and those who are unwilling to communicate with those so excommunicated, unless such permission is revoked, or if by reason of that permission properties have been seized, unless these are restored within eight days or satisfaction has been made for them, incurs *ipso facto* the sentence of excommunication. The same

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[78] First Council of Lyons, canon 12.

sentence is incurred by all who dare make use of the aforesaid permission or who on their own initiative do something of the aforesaid for the commission of which we have forbidden permission to be given. Those who remain under that sentence for the space of two months, cannot obtain absolution from it except through the Apostolic See.

Comment. The reason for this decree was that many bishops sometimes feared to impose the censure of excommunication, or of suspension and interdict, on those in authority or of high rank and their ministers, because of the injuries and oppressions that were often threatened and sometimes inflicted on them as a result of such action. The words of the decree, "their ministers" (*vel quoslibet ministros eorum*) refer to the clerics who were the ministers of the princes and were attached to their courts or tribunals, otherwise the term "suspension" would have no meaning in the decree. The words, within eight days, mean eight days from the time the decree was published. As a means of removing the evil the decree seems to have had little effect, for it continued well into the eighteenth century.[74]

CANON 32

Summary. A series of decrees dealing with the preparation of a crusade to the Holy Land.

***Text.* Zeal of faith, fervor of devotion, and a feeling of compassion ought so to move the hearts of the faithful that all who glory in the Christian name, being touched by sorrow for the outrages perpetrated against their Savior, will rise up strongly and openly and come to the aid of the Holy Land and of the cause of God. Who, endowed with the light of faith and having before his mind the extraordinary blessings bestowed by our Savior in the Holy Land upon the human race, is not stirred with devotion, filled with love, and from his inmost being animated with compassion for the Holy Land, our heritage from the Lord? Whose heart does not soften with sympathy toward our Creator who in that land performed so many acts of charity? But, alas! the land in which the Lord deigned to bring about our salvation, the land which He consecrated with His blood that by His death He might redeem man, is without cause held and fearlessly devastated by the most accursed enemies of the Christian name, the blasphemous and treacherous Saracens. The Christians are inhumanly put to death and, to the greater dishonor of the Creator and the injury and sorrow of all who profess the Catholic faith, they taunt the Christians with insulting remarks, among them: Where is the God of the Christians? These and other things which the mind**

[74] Catalani, IV, 135 f.

cannot fully comprehend or language describe, have inflamed our heart and aroused our mind, urging us who have been in that land and have not only heard the aforesaid things but have seen them with our eyes and touched them with our hands, to the utmost extent of our powers and with the aid of those whom the zeal of faith and devotion moves to this, to avenge the wrongs perpetrated against the One crucified. And because the liberation of that land must be the concern of all who profess the Catholic faith, we have convoked a council that in our deliberation of the matter with the prelates, kings, princes, and other prudent men, ways and means may be found whereby that liberation might be procured; and it might also be the occasion of the return of the Greeks to the Church, from which they in a moment of pride separated themselves, thus rending asunder the seamless garment of the Lord; and then there is the reform of morals which have been so much deformed by the sins of the clergy and people. In all of which we look for the direction of our acts and counsels to God, to whom nothing is impossible; who makes, when He wishes, easy the things that are difficult, and straight the things that are crooked.

That the aforesaid things might be the more easily realized, and the dangers of war and the length of journeys, and incidentally also the hardships and expenses of the journeys, reduced to a minimum, we chose the city of Lyons as the most convenient place for the assembling of the council. In our frequent discussions with its members they have not only manifested a sincere interest but have also given us valuable advice in matters pertaining to the liberation of the Holy Land. That we might not seem to impose undue or intolerable burdens on the shoulders of the people, we and our brethren, the cardinals of the Holy Roman Church, will pay for six consecutive years a tenth of all our ecclesiastical revenues in aid of the Holy Land; and with the approval of the holy council we decree that for the same period of six consecutive years, beginning with the next feast of the Nativity of St. John the Baptist, all ecclesiastical persons, of whatever dignity or pre-eminence, condition, state of religion, or order, all privileges or indulgences in whatever form or expression to the contrary being hereby absolutely revoked, pay for the same purpose a tenth of all their ecclesiastical revenues of whatever nature, one-half to be paid on the feast of the Nativity of our Lord and the other half on the feast of St. John the Baptist.[75] That due reverence be paid to God, to his saints, and to the glorious Virgin, whose aid we invoke in these and other matters, we command that the con-

[75] Though the Pope made the payment of the tithe obligatory upon all without distinction of rank or dignity, including monasteries of both sexes, less than two months after the publication of the constitution he began to exempt the latter. Potthast, *Regesta*, nos. 20905 (Cistercians), 20942 (Templars), 20946 (Knights of St. John), 20948 (enclosed nuns of the Order of St. Augustine), etc.

stitution published by our predecessor, Gregory (IX) of happy memory, against blasphemers be inviolably observed, and that the pecuniary penalty prescribed therein be exacted by the authorities in whose territory the blasphemy is committed and by others who exercise temporal jurisdiction therein.[76] These fines are to be collected by the ordinaries and delivered to the collectors of said aid for the Holy Land. We moreover strictly command confessors to advise and enjoin upon their penitents that for plenary satisfaction they contribute money for the same purpose. They should also advise their penitents that in making their wills or testaments, they do not forget the needs of the Holy Land. We command, moreover, that in all churches a receptacle be placed provided with three keys, one to be kept by the bishop, another by the priest of the church, and the third by a devout layman. In it the faithful are to be directed to place their alms for the remission of their sins, and in each church a mass is to be celebrated publicly one day of each week, the day to be announced to the people by the priest, for the remission of sins, especially of the sins of those who offer alms. In addition to this, that the aforesaid aid may assume larger proportions, we exhort and earnestly call upon kings and princes, marquises, barons, etc., that provision be made in the territories under their jurisdiction that each one of the faithful pay each year one denarius *ad valorem Turonensis vel unius sterlingi* according to the custom or circumstances of the locality, and another moderate amount, without, however, imposing a burden, for the remission of sins, so that, though not bound to give, no one may have an excuse or be excluded from the merit of giving. Moreover, that the above provisions to secure assistance for the Holy Land may not be jeopardized or frustrated by fraud or malice or by the clever intrigues of anyone, we excommunicate and anathematize each and all who knowingly, directly or indirectly, openly or secretly, impede or defeat the collection of tithes.

Since the corsairs and pirates too vehemently impede (assistance to the Holy Land) by capturing and robbing those who go there and those returning, we excommunicate them and their chief abetters and protectors, forbidding under threat of anathema that anyone knowingly hold intercourse with them in any contract of buying and selling. We moreover command the rulers of cities and other localities to check them and turn them away from this iniquity, otherwise it is our wish that severe ecclesiastical penalties be imposed by the prelates on their lands. Moreover, we excommunicate and anathematize those false and ungodly Christians who supply the Saracens, the enemies of Christ and of the Christian people, with arms and iron

[76] C. 2, X, De maledicis, V, 26, in which Gregory IX prescribed against blasphemers not only ecclesiastical but also pecuniary penalties, which were to be collected if necessary with the aid of the secular power. In the present constitution Gregory X directs that these fines be set aside and applied to the needs of the Holy Land.

with which they fight against the Christians and wood for the construction of ships; those also who sell them ships and who in the ships of the Saracens hold the post of pilot, or in any other way give them aid or advice to the detriment of the Holy Land; and we decree that their possessions be confiscated and they themselves become the slaves of their captors. We command that this sentence be publicly announced in all maritime cities on all Sundays and festival days and that to such people the church be not opened till they return all that they have obtained in so reprehensible a traffic and give the same amount of their own in aid of the Holy Land. In case they are not able to pay, then let them be punished in other ways, that by their chastisement others may be deterred from undertaking similar pursuits. Under penalty of anathema we forbid furthermore all Christians for a period of six years to send their ships to Oriental countries inhabited by the Saracens, in order that a greater number of ships may be available to those who wish to go to the aid of the Holy Land, and that to the Saracens may be denied the benefits that they usually reap from such commercial intercourse.

But since for the success of this undertaking it is above all else necessary that princes and Christian people maintain peace among themselves, we decree with the advice of the holy council that for six years peace be observed in the whole Christian world, and that in case of conflict, through the efforts of the prelates the discordant elements be brought together in the fulness of peace, or at least to the strict observance of the truce. Those who refuse to acquiesce in this are to be compelled by excommunication and interdict, unless the malice that inspired their wrongdoing was such that they ought not to enjoy even such peace. But if by chance they despise ecclesiastical censure, they have every reason to fear lest by the authority of the Church the secular power will be invoked against them as disturbers of the affairs of the One Crucified.

We, therefore, by the mercy of the omnipotent God, and trusting in the authority of the Blessed Apostles Peter and Paul, in virtue of that power of binding and loosing which God has conferred on us, though unworthy, grant to all who aid in this work personally and at their own expense, a full remission of their sins which they have sincerely repented and orally confessed, and promise them when the just shall receive their reward an increase of eternal happiness.[77] To those who do not personally go to the Holy Land, but at their own expense send there as many men as their means will permit, and to those also who go personally but at the expense of others, we grant a full remission of their sins. Participants of this remission are, moreover, all who in proportion to their means contribute to the aid of the Holy Land, or in regard to what has been said give suitable ad-

[77] A full remission of their sins, that is, a plenary indulgence.

vice and assistance, as well as all who in aid of the cause make available their ships or who for this purpose undertake to build ships. Lastly, to all who in a spirit of piety aid in bringing this holy undertaking to a successful issue, this holy and general council imparts the benefits of its prayers and blessings that they may advance worthily to salvation.

Comment. The fact that the constitution carries the formula *sacro approbante concilio* removes all doubt regarding its conciliar origin. It is rather a collection of constitutions or decrees dealing with matters pertaining to the organization of the crusade, some of which are here published for the first time while most of them are taken verbatim from similar constitutions issued by Innocent III in the Fourth Lateran Council and by Innocent IV in the First Council of Lyons. The constitution as we now have it is not complete in the form in which it originally came from the council. It lacks the portion covering the prohibition of tournaments during the period of the crusade. It is contained in the constitutions of Innocent III and IV, and that it was originally also a part of the present constitution is indicated by a letter of Gregory to the German Emperor, Rudolph, asking him to suppress tournaments in his domain in accordance with the decree of the council. Lacking also is the portion dealing with the preaching of the crusade, which, though forming no part of the constitutions of Innocent III and IV, was nevertheless, according to the letter of the Pope to the cardinal legate Simon, embodied originally in the present constitution.[78]

[78] Finke, *op. cit.*, pp. 14 f. Latin text of this 32 canon ibid 113-116

THE FIFTEENTH GENERAL COUNCIL (1311–12)

Council of Vienne

History. The first and foremost reason for the convocation of this council was no doubt the matter of the Order of Knights Templars, which the unscrupulous Philip the Fair of France had been urging on Pope Clement V for some years. As early as the first year of his pontificate the King suggested to him the suppression of this ecclesiastical order. The suggestion soon became a demand which, however, until October 12, 1307, was kept more or less in the background. What was constantly and with cruel persistence kept in the foreground was his demand for the convocation of a general council that should declare Boniface VIII a heretic and formally condemn his memory. Yet Philip was too shrewd to be ignorant of the fact that no general council would or could be compelled to accede to such demands. Why then did he so relentlessly agitate the question? To render the Pope later on more pliable, more yielding to his plan, the annihilation of the Knights Templars. He knew that to save Boniface, Clement could be persuaded to sacrifice the Templars. On the part of Philip it was a master move in the game of political diplomacy, a game that he would not have won had he had Boniface for opponent. That he was not sincere in his desire for a canonical process against Boniface VIII, at least its conduct by a general council, and that he used that pressure only as a weapon to wring from Clement the destruction of the Templars, seems to be further evidenced by the fact that in February, 1311, seven months before the opening of the council, when he saw that the matter of the Templars would be the chief business of the council, he wrote to the Pope resigning the case of Boniface entirely into his hands, giving him the choice either to bring it before the future general council, or to take it up with the cardinals in a consistory, or to decide it in any other way that he saw fit, a move that indicated on his part a certain measure of indifference in the matter. His reasons for bringing about the suppression of the order are not far to seek. The order was extremely wealthy; its Paris temple was the center of the world's money market. Philip was in financial straits, notwithstanding the fact that for a long time he had been robbing the Church in France. Moreover, the order was a powerfully influential factor in European politics, inconsistent, therefore, with his aim of a universal French monarchy. Clement was weak and vacillating in

character, subservient to French interests, hence too often a plaything in the hands of the conscienceless King and of his equally conscienceless political henchmen. Though Clement compromised much by spending the early years of his pontificate in France, it was a fateful decision that moved him to transfer the Curia from Rome to Avignon (1309). This exposed the papacy to the domination of the French crown, a position that Philip was not slow to utilize, particularly by demanding from him more and more insistently the dissolution of the Order of Knights Templars and a canonical process for the condemnation of the memory of Boniface VIII. To evade the latter, "which the malice of Nogaret and the cold vindictiveness of Philip would have insisted on, had not the rich prey of the temple been thrown to them," Clement gave way to the former.

The question of a general council was agreed on by the Pope and the King at Poitiers in July, 1308. Accordingly, by the bull *Regnans in coelis* of August 12, 1308, Clement called the council to assemble on October 1, 1310, at Vienne, at that time nominally German territory but in reality under French influence,[1] assigning a threefold purpose: (1) to consider and bring to a settlement the matter of the Order of Knights Templars, its individual members, and its possessions; (2) to secure aid for the Holy Land; (3) to consider ways and means for the reform of the Church and the preservation of ecclesiastical liberty.[2] Letters to this effect were sent to the kings of Christian countries. Letters were sent also to the patriarchs and to the archbishops of the various ecclesiastical provinces, to the bishops, heads of religious orders, chapters, etc., commanding them to be in Vienne at the appointed time. Only a few bishops were to remain in each province to attend to the necessary episcopal affairs, who, however, were requested to transfer their rights in writing to those of their colleagues who had been summoned to attend. All bishops and prelates, also seculars of rank, were asked to bring to the council in writing suggestions and recommendations concerning points of discipline that needed reform. Members of the Order of Templars were invited to attend to defend it against its accusers. Moreover, the order was instructed to send competent *defensores* to the council, before which the grand master and other chief officials were to appear in person. In conclusion the Pope

[1] Fournier, *Le royaume d'Arles et de Vienne 1138–1378* (Paris, 1891), pp. 409 ff.; Kern, *Die Anfänge d. französischen Ausdehnungspolitik bis 1308* (Tübingen, 1910), p. 264.

[2] ". . . concilium . . . decrevimus congregandum, ut in eo tam circa dictum ordinem et personae singulares et bona ejusdem et alia quae statum tangunt fidei catholicae, quam circa recuperationem et subsidium Terrae Sanctae, ac reparationem, ordinationem et stabilitatem ecclesiarum et ecclesiasticarum personarum et libertatem eorum, illa, Deo auspice, communi consilio inveniatur provisio et ejusdem approbatione concilii roboretur." Mansi, XXV, 373.

threatened with severe penalties all prelates who, without just cause or for the purpose of escaping the hardships of the journey, should absent themselves.[3] On April 4, 1310, Clement issued the bull *Alma mater ecclesiae*, by which he postponed the council till October 1, 1311, owing to the fact that the judicial investigation of the Templars could not be completed in time. The bull was fastened to the doors of the *ecclesia major* in Avignon. In the middle of September of this year (1311), Clement with his cardinals left Avignon for Vienne, where on October 16, after the customary three-day fast by all who took part in the council, with great solemnity he opened the first formal session in the cathedral.

With the exception of a few fragments the official acts of the council have been lost. The important discovery made by the late Cardinal Ehrle[4] a half century ago and the more recent discoveries by Göller[5] and Mollat[6] deal largely with the third part of the council's program, reform and the preservation of ecclesiastical liberty, and in this respect unfold to us one side of the council's activity which otherwise would scarcely have been possible for us to form for ourselves.[7] There were altogether three sessions. The attendance, notwithstanding urgent appeals and threats of severe penalties, was disappointing to the Pope, who desired the largest possible gathering as a support against the French King and also on account of the grave matters that awaited the attention of the council. There were present besides the 20 cardinals, 4 patriarchs,[8] 39 archbishops, 79 bishops, and 38 abbots. To this number must be added, of course, prelates of inferior rank and procurators of absent prelates and of cathedral and

[3] "Nullus inobedientiae notam et canonicae ultionis acrimoniam vitare desiderans, fallacium excusationum velamento se muniat, vel ex impedimentis itinerum . . . frivolae allegationis munimenta confingat." Mansi, XXV, 376.

[4] "Ein Bruchstück der Acten d. Concils v. Vienne," in *Archiv f. Literatur-und Kirchengeschichte d. M-A.* IV, 361–470.

[5] "Die Gravamina auf d. Konzil v. Vienne u. ihre literarische Überlieferung," in *Festgabe für H. Finke* (Münster, 1904), pp. 195–221.

[6] "Les doléances du clergé de la province de Sens au concile de Vienne," in the *Revue d'hist. ecclésiastique*, VI (1905), 319–26. Koch, "Das Gutachten d. Aegidius Romanus über die Lehre d. Petrus Joh. Olivi. Eine neue Quelle zum Konzil v. Vienne (1311–12)," in *Scientia Sacra*. Festgabe für Kardinal Schulte (1935), pp. 142–68.

[7] The standard work on the Council of Vienne is that of Dr. Ewald Müller, O.F.M., *Das Konzil v. Vienne 1311–12. Seine Quellen u. seine Geschichte*, Münster, 1934, in which he has given us an erudite and profoundly critical study of every phase of the council so far as our sources will permit.

[8] On August 4 Clement elevated Isnardus, O.P., archbishop of Thebes in Greece, to the patriarchate of Antioch (Eubel, *Hierarchia catholica medii aevi*, I, 482, 93). On October 15 he transferred Aegidius, O.P., patriarch of Grado, to the patriarchal see of Alexandria (*id.*, *Hierarchia*, I, 266, 82). On the same day he promoted Angelus, O.Er.s.A., bishop of Mothone in Greece, to the patriarchate of Grado (*id.*, *l.c.*, 351, 266). The fourth patriarch at the council was Ottobonus, the incumbent of Aquileia (*id.*, *l.c.*, 99). The vacant see of Mothone was given to the new patriarch of Alexandria *in administratione* (*id.*, 351).

conventual chapters. The total attendance may be placed at 300 or a little above that figure.[9] One reason for the absence of so many archbishops and bishops residing in countries other than France is no doubt to be found in the general belief in those countries that the Templars as a body were innocent of the crimes imputed to them, and that the whole campaign of vilification and defamation that for nearly a decade had been directed against them in France, was inspired solely by the greed of Philip the Fair, hence they did not care to take part in the condemnation of the order. Moreover, Clement V's dependence on the French King and his servile subserviency to French interests, were not likely to arouse among prelates outside of France active sympathy for him in the predicament into which he permitted himself to be drawn. Secular rulers also were conspicuously absent. Some of them did not even send representatives. One of the best represented kingdoms was Aragon, the reports of whose ambassadors, which fortunately have come down to us, have been of invaluable service in reconstructing in some measure the workings of the council.

After the customary introductory prayers, Clement delivered a sermon, choosing for his text Ps. 110:1, 2: "In the council of the just and in the congregation are the works of the Lord sought out according to all his wills." [10] In this sermon, the Pope dealt with the threefold purpose of the council and in particular set before the assembly the various stages of the process against the Templars and the results of the judicial examinations. The bulk of the council's work fell between the first and second sessions, for the matter of the Templars was given the most detailed and comprehensive consideration. It is to be noted that a new method of procedure was introduced by this council. In all earlier general councils all discussions and deliberations were conducted before or in the presence of the entire assembly. Of course, this procedure did not exclude particular or private conferences and discussions during the interval between the sessions among the bishops or between the bishops and cardinals either by themselves or in the presence of the Pope. In the present council all the work was done between the sessions. A division was made of the matter to be considered, and the examination and discussion of each was assigned to a commission elected for this purpose by the entire council. In the end these commissions made the decision, and only after it had been accepted by the Pope in a consistory, was the decision, formulated in a

[9] Müller, pp. 73–83, has published a list of the patriarchs, archbishops, bishops, and abbots who attended.

[10] "In consilio justorum et congregatione magna opera domini exquisita in omnes voluntates ejus." The omission of the period after *congregatione*, as we have it in the original, was no doubt made intentionally by the Pope to adapt the text to the situation. The sermon has not come down to us.

papal bull, read before a plenary and formal session of the council, which was after all nothing more than an official publication and a tacit confirmation by the entire council of the decisions arrived at by the combined commissions.[11] These commissions were made up of all hierarchical grades—patriarchs, archbishops, bishops, exempt and non-exempt abbots, prelates of minor rank, and the representatives of absent bishops, who came from nearly every country in Christendom. Early in December, 1311, the vast majority of the members of the council voted against the abolition of the Order of Templars on the ground that till then no proof sufficient to condemn it had been found. Standing between this vote and the relentless insistence of the powerful French King for the destruction of the order, the position of the Pope was a difficult one. Reluctant to disregard the former, he had good reason to fear that refusal to give way to the latter might entail consequences not unlike those that sealed the fate of his predecessor, Boniface VIII. In this dilemma Clement chose a *via media.* He suppressed the order, not by penal sentence, but *per modum provisionis seu ordinationis apostolicae.* The bull *Vox in excelso,* decreeing its dissolution, is dated March 22, 1312, and was read April 3 in the second formal session. Decision regarding the persons and possessions of the Templars the Pope reserved to himself.[12]

The question of the crusade in aid of the Holy Land, excepting the ecclesiastical tithes, was largely a matter between the Pope and the secular rulers, and therefore a matter for private conferences. Though in the third and last formal session, held May 6, 1312, it was decided to place a tithe for six years upon all churches throughout Christendom, and promises had been made by some rulers to undertake the crusade at the time appointed, nothing ever came of it.[13]

The third part of the conciliar program, reform and protection of ec-

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[11] Müller, p. 93. This explains the long interval between the first and second sessions, almost six months. The intervals between the sessions of the Lateran Councils and those of Lyons averaged seven or eight days. This method of procedure introduced by the Council of Vienne was adopted by subsequent general councils, Constance, Basle, and especially the Fifth Lateran and Trent.

[12] That the question of a canonical process against Boniface VIII was brought up before the council by the representatives of Philip the Fair and used by them as a club to intimidate unwilling members to agree to the condemnation of the Templars, seems very probable. Whether a formal juridical process was instituted by the Pope and conducted in an open and public session of the council, is not known; we have no sources to throw light on this question. It seems highly improbable, however, for under the circumstances it would have been the height of folly and imprudence on the part of the Pope to drag the matter before an open session. That it was made the subject of a secret discussion, is more likely. On the other hand, we may safely assume that since Philip had won his battle against the Templars, he was willing to let Boniface VIII rest in peace. Cf. Müller, pp. 184–90, and *passim.*

[13] Müller, pp. 146–75.

clesiastical liberty, was, after the Templars, the major task before the council. One of the outstanding topics in this respect that presented itself, connoting a situation that called for immediate consideration and adjustment, was that bitter and longstanding controversy regarding the vow of poverty within the Order of Friars Minor. For the settlement of the quarrel the Pope issued two constitutions, one of which consists of dogmatic decisions and the other is an explanation or interpretation of the rule of the order. There can be no question but that, after mature deliberation and discussion of the complaints and recommendations handed in by bishops and others in response to the Pope's request, a large number of reform decrees were drawn up by the various commissions and read in the last plenary session of the council.[14] Unfortunately it is impossible at the present time to determine how many such decrees proceeded from the deliberations of the council. Altogether there are in the five books of the *Clementines* no more than twenty decrees of which we have absolute certainty that they proceeded from the action of the council. This certainty comes to us from the fact that they contain the formula: *sacro approbante concilio*.[15] That besides these twenty, more were issued with the approval of the council, though without a statement of such approval, there can be no doubt at all. The Pope's master of ceremonies, after giving a number of decrees issued by the council, tells us that Clement at the end of the third session expressed a desire to have those decrees also that had not yet been read before the assembled members of the council (that is, those that had been roughly drafted but on account of the lack of time had not yet been reduced to proper and finished form) regarded as having proceeded from the deliberations of the council, that is, he wished them also to be regarded as conciliar decrees.[16] For the completion of these he

[14] It has been said that the chief reason for the convocation of this council was disciplinary reform, and hence the council is characterized as a reform council. This is erroneous. However much reform was needed, and however much the Pope desired it, it was not the chief reason that moved him to convoke it. Moreover, Vienne cannot be called a reform council in the sense in which that term is predicated of Constance, Basle, and especially of Trent. Disciplinary reform had been part of the program of all general councils from I Nicaea to Vienne. It was one of the chief reasons that moved Innocent III to convoke the Fourth Lateran Council, which, though it issued sixty-seven reform decrees, has never been classed as a reform council.

[15] Hefele (VI, 665) by an oversight attributed to this council only nineteen decrees that contain the formula *sacro approbante concilio*, omitting canon 2, De cens., III, 13, which I have added to the following list as no. 20. This formula is, of course, not used in all conciliar decrees, even of the earlier general councils, which the popes issued with the approval or concurrence of the council. Thus, of the twenty-eight decrees issued by Gregory X with the concurrence of the Second Council of Lyons (not counting no. 2), only one contains the formula. The eighteen decrees of the First Council of Lyons have it only five times, and in the list of seventy decrees issued by Innocent III with the approval of the Fourth Lateran Council, it is used only nine times.

[16] Ehrle, *Archiv*, IV, 442, 449.

suggested that the council before its dissolution choose a commission. All of these decrees the Pope wished should not obtain the force of law until they had been transmitted to the universities for judicial and academic use. Bernard Guidonis, who in one place speaks of the council *in quo fuerunt multe constitutiones edite*,[17] informs us that it was Clement's intention to publish all the decrees issued by the council and those also issued by him before and after the council as the *Liber septimus*, as Boniface VIII had published the *Liber sextus*. However, owing to the unfinished condition of many, they were left *in suspenso* till their completion and customary transmission to the universities, so that their publication was delayed nearly two years.[18] John XXII expresses himself in a similar manner when he says that his predecessor Clement V had intended to publish in a single collection not only those constitutions which he issued in and with the concurrence of the Council of Vienne, but those also that he had issued before and after that council.[19] It was for this purpose that on March 21, 1314, four weeks before his death, he held a consistory at Monteux, near Carpentras, where he with the Curia then resided and where all the decrees received their final reading. After this it was his intention to transmit them in the customary manner to the universities, from which, however, he was prevented by illness and death, so that the matter remained at a standstill till John XXII (October 25, 1317), very likely after another revision, published them under the name of *Clementines* by sending them to the universities and thus gave them juridical value.

Under these circumstances it is an extremely difficult and in some cases an impossible task to distinguish the conciliar decrees from those that Clement issued before and after or even during the council but without its concurrence. The unfinished decrees of the council underwent important changes at the hands of the commission appointed to complete them. It is very probable that they underwent further changes under the direction of John XXII before their final publication. So that one is almost tempted to conjecture whether even contemporaries of John XXII, unless they happened to be jurists, were able to tell in all cases which was which, to distinguish the conciliar from the non-conciliar decrees. That a decree or two enacted by the council are not in the *Clementines*, is not at all improbable. That some that were issued as one exist now in the *Clementines* as two distinct decrees under two different titles, seems to be a fact. The difficulty assumes more discouraging proportions when we consider

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17 Baluzius, *Vitae paparum avenionensium*, I (Paris, 1916), 73.

18 Ehrle, *Archiv*, IV, 456 f.; Müller, p. 393, note 29.

19 Bull of transmission *Quoniam nulla juris sanctio*, Friedberg, *Corpus Jur. Can.*, II, 1130.

that the first chapter of all titles, except one,[20] in the entire five books of the *Clementines*, is headed by the words: *Clemens V in concilio Viennensi*, while at the head of the subsequent chapters or decrees under each title we have *idem in eodem* or simply *idem*, mostly the latter, a procedure giving the impression that all of the decrees in the five books are conciliar decrees, which according to the above declaration of John XXII is by no means the case and which we know from other sources not to be the case.[21] For instance, there are several decrees that contain the formula: *de fratrum nostrorum consilio statuimus*, or its equivalent, indicating that they were issued by the Pope not with the concurrence of the council, but with the advice of the cardinals either before or after the council.

Besides the twenty conciliar decrees referred to above, there is one more about whose conciliar origin there can be no doubt, though it does not contain the formula of conciliar approval. It is the big constitution *Exivi de paradiso*, explaining the Rule of St. Francis with a view to adjusting the disputes within his order.[22] These twenty-one decrees we shall deal with first, and then pass on to the consideration of others which, though they do not contain the formula of approval, seem nevertheless to have the earmarks of decrees emanating from the deliberations of the council.[23]

CANON I

Summary. The council confesses that the only begotten Son of God, subsisting eternally in the essence of God, took a true human body from the Virgin, suffered in it and having expired was pierced by a lance. It condemns the doctrine that the substance of the rational or intellectual soul is not *vere et per se* the form of the human body. Asserting that we must confess one baptism as we confess one God and one faith, it approves the opinion that in baptism the virtues and the *gratia informans* are infused in children and adults alike.

***Text*. Adhering firmly to the foundation of the Catholic faith, other than which, as the Apostle testifies, no one can lay,[24] we openly**

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[20] C. un., De sequest, poss. et fruct., II, 6.

[21] There are in the *Clementines* altogether 52 titles and 106 decrees. Of these decrees, 51 bear the superscription *Clemens V in concilio Viennensi;* 10 *idem in eodem*, and 45 simply *idem*.

[22] Müller, pp. 238 f.

[23] Cf., in addition to the works already referred to, Mansi, XXV, 367–414; Ehrle, "Zur Vorgeschichte d. Concils v. Vienne," in *Archiv f. Literatur- u. Kirchengeschichte d. M-A.*, II, 353–416, III, 1–195; Hefele-Leclercq, *Hist. des conciles*, VI, 504–719; Lizérand, *Clemens V et Philippe IV le Bel*, Paris, 1910; Finke, *Papsttum u. Untergang d. Templerordens*, Münster, 1904; Jungmann, "Clemens V u. die Aufhebung d. Templerordens," in *Zeitschr. f. kath. Theologie*, V (1881), 1–33, 389–452, 581–613; Gmelin, *Schuld u. Unschuld d. Tempelherrenordens*, Stuttgart, 1893; Haller, *Papsttum u. Kirchenreform*, Berlin, 1903; Heber, *Gutachten u. Reformvorschläge f. d. Vienner General-Konzil 1311–12*, Leipzig, 1896; Duffour, "Doléances des évêques gascons au concile de Vienne," in the *Revue de Gascogne* (1905), pp. 244–59.

[24] See I Cor. 3:11.

confess with holy mother the Church, that the only begotten Son of God, subsisting eternally together with the Father in all those things in which God the Father exists, assumed in time in the womb of a virgin *ad unitatem suae hypostasis et personae,* the parts of our nature at the same time united (from which He in Himself true God became true man), namely, the human passible body and the intellectual or rational soul *vere per se et essentialiter* informing the body. And that in this assumed nature the Word of God wished for the salvation of all not only to be nailed to the cross and to die on it, but also, having already breathed forth His spirit, suffered His side to be pierced by a lance, that from the water and blood issuing therefrom, there might be formed the one, immaculate, and holy mother Church, the spouse of Christ, as from the side of the first man while asleep Eve was formed in wedlock to him, that thus to the figure of the first and old Adam, who according to the Apostle is a figure of him who was to come,[25] *in nostro novissimo Adam, id est Christo, veritas responderet.* This, I say, is the truth,[26] fortified by the testimony of that huge eagle which the prophet Ezechiel saw flying over the other animals and the testimony of St. John, the Apostle and Evangelist, who narrating the fact and order of this union (*sacramentum*) says in his Gospel: "But after they were come to Jesus, when they saw that He was already dead, they did not break His legs. But one of the soldiers with a spear opened His side, and immediately there came forth blood and water. And he that saw it, hath given testimony and his testimony is true, and he knoweth that he speaketh the truth, that you also may believe." [27] We, therefore, turning our Apostolic attention to such clear testimony and to the common teaching of the holy fathers and doctors, with the approval of the holy council declare that the aforesaid Apostle and Evangelist St. John spoke the truth when he stated that one of the soldiers with a spear opened the side of Christ after He was already dead.

Moreover, we condemn with the approval of the same holy council every doctrine or exposition rashly asserting or expressing doubt that the substance of the rational or intellectual soul is not *vere ac per se* the form of the human body as erroneous and opposed to the truth of the Catholic faith, at the same time declaring, in order that the truth may be known to all and the approach to universal errors precluded, that anyone who shall in the future presume obstinately to assert, defend, or hold that the rational or intellectual soul is not *per se et essentialiter* the form of the human body, is to be regarded as a heretic.

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[25] Rom. 5:14.
[26] In all of these decrees it is the Pope that is speaking.
[27] See 19: 33-35.

From the fact that all must faithfully confess that a single baptism, as one God and one faith,[28] administered in water in the name of the Father, and of the Son, and of the Holy Ghost, regenerates all those baptized in Christ, we believe that it is a perfect remedy unto salvation for adults as well as for infants. But while some theologians are found to have contrary opinions regarding the effect of baptism in infants, some of them saying that by baptism sin is indeed remitted in infants but grace is not infused, while others maintain that in them by baptism both sin is remitted and the virtues and the *gratia informans* infused *quoad habitum* though for the time not *quoad usum,* we, considering the general efficacy of the death of Christ (which by baptism is applied equally to all baptized), with the approval of the holy council choose the second opinion (which says that in baptism the virtues and the *gratia informans* are infused in children and adults alike) as the more probable one and more in accord with the teachings of the saints and of the modern doctors of theology.[29]

Comment. This decree, without mentioning the person against whom it was directed, established three points of Catholic doctrine against the errors of Pierre Jean Olivi, theological author and leading spokesman of the Franciscan Spirituals or rigorists: (1) the moment our Lord's body was pierced by a lance; (2) the manner in which the soul is united to the body; and (3) the baptism of infants.

It was not long after the death of St. Francis (1226) that the spiritual or reform tendency within his order became manifest.[30] To understand this movement it is sufficient to recall that in writing the Rule of 1223 Francis made no provision for its adaptation to changed conditions, to certain modifications in the life of the friars necessitated by the growth in membership and by their enlarged field of missionary and academic labor. It lacked the broad and workable flexibility of the Rule of the Order of St. Dominic, a point that was early recognized in authoritative circles and by the *fratres scientiati*, who, to meet the needs of the times, began in some measure to relax its rigors. These relaxations gave rise to a faction within the order that insisted without compromise on the observance of the Rule in its primitive severity, especially with regard to poverty.

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[28] Ephesians, 4:5.

[29] Denzinger, *Enchiridion*, nos. 480–83.

[30] A similar movement, though less pronounced, existed at the end of the thirteenth and the beginning of the fourteenth century in the Dominican Order. It originated in the Roman province, which comprised, besides Rome itself, the Marches, Umbria, and Tuscany, and aimed at a return to the primitive simplicity. At the general chapter of the order held at Florence in 1321 the question was definitively settled. Masetti, *Monumenta et antiquitates veteris disciplinae Ord. Praed.*, I (Romae, 1864), 277 f.; Reichert, *Monumenta Ord. Praed. Hist.*, IV (Romae, 1899), 137 f.; Ehrle, *Archiv*, III, 611 f.

This was the root of the long and unfortunate controversy that affected even imperial politics and eventually was to rend the order asunder.[31] It had its origin in two conflicting conceptions of poverty as a means to evangelical perfection. The traditional view in the order of the obligation imposed by poverty was this: the complete renunciation of ownership of property of every description by the order as a whole and by the individual, so that the members were entitled only to the use of things given to them, but this use was to be an *usus pauper seu arctus*, that is, a poor or restricted use. In the second half of the thirteenth century, especially since the death of St. Bonaventure (1274), the order experienced a period of moderate decline in a number of points of observance but particularly in that of poverty, relaxations that were accepted and defended by the majority but vigorously opposed by the minority. All agreed that the *altissima paupertas* demanded from the order and from each member an unconditional renunciation of proprietorship of every description. On the other question, however, whether besides this absolute renunciation it demanded from each member also the *usus pauper*, opinion was divided. The community, that is, the majority, maintained that the *usus pauper* does not belong to the substance of evangelical poverty. An immoderate use of earthly things might militate against other virtues but not against poverty, though it was conceded that by reason of certain prohibitions imposed by the rule the *usus pauper* might become an obligation *ex condecentia status*, but only in the measure prescribed by the Rule. Against this conception stood the minority, the rigorists, commonly known as Spirituals. Their chief spokesman was Olivi (d. 1298),[32] who declared that renunciation of earthly possessions without the *usus pauper* is like matter without form.[33] The community left nothing undone to bring about the complete discredit of Olivi. As far back as 1282, at the general chapter of Strassburg, it had accused him of heresy. The struggle did not end with his death. The time for the council was approaching and with fierce and relentless determination the community fought to have him declared a heretic or at least to have certain propositions excised from his works declared heretical, charges to which his peculiar literary style

[31] The Pope in a letter, May 21, 1313, to the general chapter held at Barcelona called it *dissensionis odibilis ingrata materia*. *Bullarium Franciscanum*, V, 93, n. 212.

[32] An excellent and detailed biography of this remarkable and long-forgotten man and scholar was written by Ehrle, "Petrus Johannis Olivi, sein Leben u. seine Schriften," in *Archiv*, III, 409–552. Cf. also Jansen, "Petrus Joh. Olivi. Ein verschollener Denker," in *Wege der weltweisheit* (Freiburg, 1924), pp. 125–44; René de Nantes, *Histoire des Spirituels dans l'Ordre de Saint François* (Paris, 1909), pp. 267–342.

[33] ". . . sicut forma se habet ad materiam, sic usus pauper se habet ad abdicationem omnis juris. Unde sicut materia sine forma est informis et confusa, instabilis, fluxibilis et vacua seu vana et infructuosa, sic abdicatio omnis juris sine paupere usu se habet." Ehrle, *Archiv*, III, 508.

readily lent itself. The years 1309–12 witnessed the greatest struggle in Franciscan history. The Pope decided to take a hand in the matter and in 1309 placed the whole controversy before the curia in Avignon for examination, whence it passed over into the hands of the council. On March 1, 1311, the community in a consistory before the Pope and all the cardinals accused Olivi of the following errors: (1) Christ's side was pierced while He was still alive; (2) the divine substance is divided in the three Persons; (3) matrimony is not a sacrament in the sense in which that term is understood of the other sacraments of the New Testament; (4) children in baptism do not receive the virtues and the *gratia informans;* (5) the rational soul is not *per se* the form of the body; (6) the sacramental character has no more effect on the soul than the consecration has on a church; (7) the *usus pauper* belongs to the substance of evangelical perfection; (8) the burial of a layman in a cemetery of religious cannot be regarded as an act of mercy unless he cannot find burial elsewhere.[84] On July 4 of the same year the Pope appointed a commission to examine the works of Olivi with regard to the alleged errors. On May 5, 1312, he invited the cardinals, the representatives of both parties, and the examining commission to a secret consistory. The decision was announced the following day in the last session of the council. Wedged in between the demands of the community and those of the reform party, Clement again chose the *via media* by giving to the former the present dogmatic constitution *Fidei catholicae fundamento*, and to the latter the constitution *Exivi de paradiso*.[85]

The council begins the constitution with a declaration of an already defined article of faith regarding the human nature of Christ,[86] who, as the eternal Son of God existing in the same substance with the Father, through His incarnation assumed a human passible body and a rational soul *per se et essentialiter* informing the body. In conclusion it restates the teaching of St. John concerning the moment our Lord's body was pierced by a lance. It does not appear that Olivi denied the doctrine of St. John on that point. He did, however, it seems, in his commentary on the Gospel of St. John (and this was admitted by his followers), discuss the possibility of such an interpretation, namely, that our Lord's body was pierced by a

[84] The document has been edited by Ehrle, *Archiv*, II, 365 ff.

[85] Cf. canon 21 of this series. For a detailed study of these two constitutions and the events leading up to them, cf. Müller, pp. 236–386. For further literature on the controversy, cf. Balthasar, *Gesch. d. Armutsstreites im Franziskanerorden bis zum Konzil v. Vienne*, Münster, 1911; Gratien, *Histoire de la fondation et de l'évolution de l'ordre des Frères Mineurs au XIII^e siècle* (Paris, 1928), pp. 337–475. For the history of the Spirituals, besides the work of René de Nantes already referred to, cf. also Ehrle, "Die Spiritualen, ihr Verhältniss zum Franziskanerorden u. zu den Fraticellen," in *Archiv*, I, 509–69; II, 106–64; III, 553–623; IV, 1–190.

[86] Cf. canon 1 of the Fourth Lateran Council.

lance whilst He was still alive, a statement that he did not expressly reject.

The second part is the famous and much discussed decree in which the council declared that the rational soul is *per se* the form of the human body. From the point of view of what the council precisely condemned, the decree is not as clear as we should like to have it, owing, perhaps, to the fact that Olivi himself in his writings is obscure, inexact, and inconsistent. It was just this lack of clarity, theological inexactness, and what seem to be contradictory statements (a prudent diplomacy on his part to keep out of trouble) that constituted the chief source of his troubles, as they have ever since been a source of handicap to those who have attempted to discover what it was precisely that the council condemned. In 1875 Palmieri, S.J., in his *Anthropologia* declared that the council in this decree condemned Olivi's teaching of the plurality of forms in man. In his reply, Cardinal Zigliara, O.P., maintained that Olivi's error consisted not in an admission of plurality of forms but in a false conception of the *modus unionis* between the soul and the body, and that the council in this decree did not condemn the plurality of forms but merely defined the nature of the union of the soul with the body.[37] Palmieri in his rejoinder,[38] using the same sources that Zigliara had used, insisted on the accuracy of his statement of plurality of forms.[39] Jansen, S.J., who for many years has been engaged in the study of Olivi's works, states his teaching thus: The soul consists of spiritual matter and three forms, the intellectual, sensitive, and vegetative, which by their union effect the *anima rationalis*. All three forms are rooted in the *materia spiritualis*.[40] The union of the three forms is a physical or mechanical one. The *pars intellectiva* of the soul is not an informing principle of the body. It is the *pars rationalis* that informs the body, not *per se* but *per partem sensitivam*.[41] Jarraux, O.F.M., holds that the teaching condemned by the council is not the teaching of Olivi at all.[42]

Briefly, it may be said that Olivi's error consists in a real, not imaginary, separation of the *pars rationalis* from the *pars intellectiva*, and in a real distinction between the former and the *pars sensitiva*, maintaining that the former is the form of the body not *per se* but *per partem sensitivam*, not

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[37] *De mente concilii Viennensis*, Romae, 1878.

[38] *Animadversiones in recens opus de mente concilii Viennensis*, Romae, 1878.

[39] The plurality of forms and the existence of *materia spiritualis* were not a novelty in the days of Olivi. Both were and always had been tenets of the Franciscan school. They had been the tenets also of the Dominican school till they were replaced by St. Thomas Aquinas, who taught that the rational soul is the form of the human body. This decree of the Council of Vienne was renewed by the Fifth Lateran Council (Denzinger, no. 738) and by Pius IX in a brief to the Archbishop of Cologne (*id.*, no. 1655).

[40] So far Olivi is in harmony with Franciscan teaching.

[41] "Die Lehre Olivis über das Verhältnis von Leib u. Seele," in *Franziskanische Studien*, V (1919), 153 ff.

[42] "Pierre Jean Olivi, sa vie, sa doctrine," in *Études Franciscaines* (1933), pp. 513 ff.

directly and immediately, but indirectly and mediately. This is the error that the council condemned. It defined the nature of the union between the soul and body by declaring that the rational soul is the form of the body *vere per se et essentialiter* and not *per partem sensitivam*, the question of the number of forms in man it left open.[43] If Olivi had in mind only a logical distinction between the *pars rationalis* and the *pars intellectiva* and a like distinction between the three forms, then his whole discussion of the question amounted to nothing more than just so much verbal nonsense. It is significant, but for the sake of emphasis no doubt, that the council expressed in this constitution against the error of Olivi the orthodox formula three times: (a) *animam intellectivam seu rationalem ipsum corpus vere per se et essentialiter informantem;* (b) *substantia animae rationalis seu intellectiva vere ac per se humani corporis forma;* (c) *anima rationalis seu intellectiva sit forma corporis humani per se et essentialiter.*

The council had in mind, of course, to defend or protect the human nature in Christ. That the significance of Olivi's error is not merely a philosophical one but extends itself into the realm of theology is evident from the opening words of the constitution: *Fidei catholicae . . . Unigenitum Dei Filium corpus humanum passibile et animam intellectivam seu rationalem ipsum corpus vere per se et essentialiter informantem assumpsisse ex tempore in virginali thalamo ad unitatem suae personae.* What the council affirms *de anima Christi respectu corporis ejus*, it declares to be universally true concerning the union of the rational soul with the body in man. If the rational soul is not *per se et essentialiter* the form of the human body, then Christ did not assume the complete human nature. Moreover, the error destroys the unity of man by destroying the subordination of the *pars sensitiva* to the *pars rationalis.* It predicates of man a dual principle of action running parallel with each other and each independent of the other, a dualism that is subversive of every principle of moral theology.[44]

With regard to the last question, the baptism of infants, it is difficult to see how the community could hold anything against Olivi on that point,

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[43] Cf. Ehrle, *Archiv*, V, 635.

[44] In addition to the works already referred to, cf. Koch, "Verurteilung Olivis auf d. Konzil v. Vienne u. ihre Vorgeschichte," in *Scholastik*, V (1930), 489 ff.; Debievre, "La définition du concile de Vienne," in *Recherches de science religieuse*, III (1912), 321 ff.; Ehrle, *Archiv*, III, 458 ff.; Jansen, "Quaestiones in secundum librum Sententiarum," in *Bibliotheca Franciscana Scholastica med. aevi*, IV, Quaracchi, 1922 ff.; Koch, "Der Sentenzenkommentar d. Petrus Joh. Olivi," in *Recherches de théol. ancienne et médiévale*, II (1930), 290 ff.; Jansen, "Die handschriftliche Überlieferung d. speculativen Schriften Olivis," in *Phil. Jahrbuch*, XXXI (1918), 141 ff.; Müller, pp. 352 ff.; *Dict. de théol. catholique*, sub "forme du corp humaine."

This portion of the decree played a prominent part in the Güntherian controversies of the last century. Cf. Hefele-Leclercq, VI, 670 f. and art. "Günther, Anton" in *Cath. Encyclopedia.*

for the question had never been authoritatively defined, and the Pope himself admitted in the decree that till then there had been two opinions in the matter.[45]

CANON 2

Summary. The Friar Preachers and the Friars Minor may preach without hindrance in their churches and in public places, that hour excepted during which the prelates preach. In parochial churches they may not preach or hear confessions unless invited. They may bury in their churches and cemeteries all who shall freely choose to be buried there; of the stipend, however, and of all gifts and bequests of every description they must give one fourth and no more to the parochial church of which the deceased was a member.

Text. The following decretal published by our predecessor, Boniface VIII, was by decree revoked by our predecessor, Benedict XI. Since, however, as results have proved, this latter has not brought about the peace hoped for by its author, but rather has added fresh fuel to the conflict for the pacification of which it was designed, we absolutely annul it and with the approval of the holy council renew that published by the aforesaid Boniface, which is as follows:

"Boniface, bishop, servant of the servants of God, for the future memory hereof.

"Having been elevated by the favor of divine clemency to the chair of pastoral pre-eminence, and burdened though we are with many and arduous affairs that everywhere rush like a torrent onto the Roman curia, and overwhelmed with innumerable cares and distracted by many considerations, nevertheless, for this we earnestly and readily disengage ourselves and to it devote ourselves with untiring solicitude, that for the glory of the divine name, for the exaltation of the Catholic faith, and for the advancement of faithful souls, peace may live, charity reign, harmony prevail, and unanimity of mind endure between the bishops charged with the care and government of the flock of the Lord, and other persons included in the *ordo clericalis*. For we know and from the evidence of facts we gather that only in time of peace is due worship given to the Author of peace. Nor are we ignorant that dissensions and scandals prepare the way for evil actions, stir up rancor and hatreds, and furnish occasions for forbidden morals. For a long time past there has existed between the bishops and the parochial clergy throughout the different provinces of the world on the one hand, and the Friar Preachers and the Friars Minor on the other, a grave and dangerous quarrel in the matter of preaching, of hearing confessions and of burying the dead who choose to be buried in the churches or the

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[45] Peter Lombard speaks of the two opinions without, however, committing himself to a decision in favor of either one (IV Sent. dist. 4, c. 7). So also does Pope Innocent III in a brief to the Archbishop of Arles in 1201 (c.3, X, De baptismo, III, 42).

cemeteries of the friars. Now, considering and weighing carefully in our mind how full of danger this strife is, how fraught with losses, and how odious in the sight of the divine Majesty, and moreover, having in mind to remove and completely eradicate it, so that it may with the help of God at no future time ever be revived, and desiring also that this matter be brought to a speedy and satisfactory termination by Apostolic authority, we, after careful deliberation of this matter with our brethren, for the honor of God and the exaltation of the Catholic faith, for a state of peace between the aforesaid parties and the advancement of the salvation of souls, with the advice of the same brethren and by Apostolic authority decree and ordain that the friars of the aforesaid orders may in their churches and their other places of worship and in public places freely preach and expound to the clergy and people the word of God, that hour alone excepted during which the prelates of the localities wish to preach or have some one preach for them; during this hour they shall not preach except by previous arrangement with and special permission of the prelates. In the *studia generalia,* where it is customary to give a special sermon to the clergy on certain days, at funerals and on special feasts of these religious, the friars are permitted to preach, unless perchance during the hour in which it is customary to preach to the clergy in the aforesaid places, the bishop or superior prelate should for certain and urgent reasons assemble the clergy before himself. In the parochial churches, however, the friars may not and shall not dare preach unless they shall have been called or invited by the parish or parochial clergy or with their permission sought and obtained, unless the bishop or superior prelate should command them to preach.

"By the same authority we decree and ordain that in every city and diocese in which the friars have convents, and in neighboring cities and dioceses in which they have no convents, the masters and priors provincial of the Dominicans or their vicars general and the ministers provincial and guardians of the Friars Minor must either *per se aut per fratres quos ad hoc idoneos fore putaverint,* present themselves before the prelates or bishops of those localities and humbly request that with their permission and good will the friars who have been chosen for this work may in their cities and dioceses freely hear the confessions of those of their subjects who wish to confess to them. For executing so salutary a ministry the masters, priors provincial, and ministers of the aforesaid orders shall strive to choose able and competent persons, of approved character, discreet, virtuous, and skilled, whom they shall present or have presented to the bishops, that with their permission and good will they may in their cities and dioceses hear the confessions of those who wish to confess to them, as has been said above. In cities and dioceses other than those to which they have been sent or appointed,

that is, those in which they have no episcopal permission to labor, they may by no means hear confessions, for we wish that permissions or faculties granted for a certain diocese apply only to that diocese and not to an entire province. The number of persons to be chosen for exercising an office of this kind must be in proportion to the number of clergy and people to be served. If the bishops grant the permission sought for hearing confessions, let the aforesaid masters, ministers, and others receive it with thanks and let the persons chosen execute the office committed to them. But if perchance any bishops should be unwilling to accept for this office any one of the friars presented to them, then another may and ought to be substituted but similarly presented to the same bishops. Should the bishops again refuse the necessary permission, then we ourselves from the plenitude of Apostolic power graciously grant it to them that they may freely and licitly hear the confessions of those desiring to confess to them. By this concession, however, we do not by any means intend to bestow upon the friars chosen for such work more extensive powers in this matter than is conceded by law to the parochial clergy, unless the prelates themselves should suggest that in this matter a larger power ought to be granted them.[46]

"To this decree and ordination of ours we add, moreover, that the friars of the aforesaid orders may have free burial in their churches and cemeteries wherever located, that is, they may bury all who should wish to be buried in their churches or cemeteries. However, that the parochial churches and their clergy who have charge of the administration of the sacraments and to whom it belongs by law to preach and to hear confessions, may not be defrauded of their due and necessary means, since laborers are worthy of their reward, we by the same Apostolic authority decree and ordain that the friars of the aforesaid orders shall be obliged to give to the parochial clergy one-fourth of the income accruing from funerals and from everything bequeathed to them in any manner whatsoever for any fixed or definite purpose, even of such bequests of which it has hitherto not been customary or by law established to give or demand the canonical portion; also of all bequests made to them *in mortis articulo* or during the illness which caused the death of the donor. Of such gifts or bequests also that have been left to the friars through a third party, a fourth part shall be given to the parochial clergy.[47] In order to enforce the observance of these provisions, we make it on the part of the friars a matter of conscience, so that if (which God forbid) it should happen that fraud or deception has been practiced in this matter, they will be held to a strict account on the day of judgment. Beyond the portion fixed above, the parochial

[46] This concession precludes absolution from reserved cases.

[47] This does not include gifts and legacies left to the friars when the donor chooses to be buried elsewhere. *Bull. Ord. Praed.*, II, 67, no. 36.

clergy may not demand anything, neither are the friars bound to give more, nor can they be compelled to do so by anyone. All privileges, favors, and immunities, verbal or written in any form, expression, or conception of words, granted by us or by our predecessors, the Roman pontiffs, to the aforesaid orders, as well as all customs, agreements, and decisions in so far as they militate against the foregoing provisions or against any one of them, we revoke and declare absolutely null and void.

"We pray, exhort, and strictly command all prelates, whatever their pre-eminence, status, or dignity, and all the parochial clergy that, inspired by reverence toward God and the Apostolic See, they hold in benevolent esteem the aforesaid orders and their members, treating them not harshly and cruelly but exercising toward them a spirit of agreeableness and generosity, and enlist them as colaborers in the field of preaching and expounding the word of God, that thus their reward of eternal happiness may be augmented and the furtherance of the salvation of souls procured. Nor let them forget that should they act otherwise in this matter, the Holy See, which holds in great favor and harbors in the bowels of charity the orders and their members, will be not unjustly aroused against them, nor could it calmly tolerate such things without applying the proper remedy; and over and above, the just indignation of the heavenly King, whose generous support ever accompanies the devotedness of the friars, in making awards for merits, will surely not prove remiss in regard to them."

Comment. To put an end to the long-standing discord between the secular and regular clergy, particularly the two mendicant orders, Dominicans and Franciscans, Boniface VIII published (February 18, 1300) this famous constitution *Super cathedram*, in which he adjusted the relations of the two orders of clergy in the matters of preaching, hearing confessions, and burials, and revoked all the privileges of the friars in so far as they militated against the provisions of the constitution. Though it produced the desired result, it was nevertheless abrogated by his successor, Benedict XI, in the constitution *Inter cunctas* of February 17, 1304.[48] The effect was a return to the earlier deplorable situation; hence, acting on the insistent request of the bishops, Clement restored it in the third session of the council. While the Pope was eager for a permanent settlement of the quarrel, he felt that the provisions of the *Super cathedram* were too severe. Three times, his master of ceremonies tells us, he implored the bishops in the third session to mitigate the provisions of that constitution, at least that concerning the *quarta* of the funeral stipends, bequests, etc.,

[48] C.1, Extravag. comm., V, 7. *Bull. Ord. Praed.* II, 88.

for otherwise the friars would be unable to maintain themselves. If, however, they insisted on its restoration in its present form, there would be nothing left for him to do but to accede to their request.[49] So it remained unchanged.

The opposition of the bishops and parochial clergy to the two mendicant orders was at that time already an old one.[50] It was particularly virulent at the University of Paris and throughout France. At the University of Oxford we find it in a milder form, while isolated cases existed also in other countries. At an early date these orders had been exempt from the jurisdiction of the bishops and had been granted unrestricted freedom

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[49] "Et illam 'Super cathedram' innovavit seu renovavit; rogavit tamen prelatos ter diversis vicibus in eadem tercia sessione, quod aliquid benignitatis ostenderent religiosis ultra quam dicatur in illa 'Super cathedram,' maxime circa quartam; nam non possent alias vivere. Nichilominus tamen si non consentirent prelati in aliqua mutatione illius 'Super cathedram,' ipse papa sequetur voluntatem ipsorum et ipsam, ut predictum est, renovabit." Ehrle, *Archiv*, V, 580.

[50] When the first band of Dominicans came to Paris in 1217 they were confronted with the pretensions of the cathedral chapter which attempted to make them subject to its jurisdiction like the ordinary faithful. Bernard, *Les dominicains dans l'université de Paris* (Paris, 1883), pp. 44–54. A similar arrogance was encountered by the two orders in other localities. They were forbidden to reserve the Eucharist in their chapels and churches, to have church bells and cemeteries of their own. On Sundays they were to attend mass in the parish church. The pastor was to determine the hour of mass and the number of candles to be used, etc. Some claimed the right to be present at the chapter to appoint the superior of the house or at least to confirm the one elected. They claimed a right to the offerings of the faithful at the masses and to the books donated to them. Often permission for a foundation was only then granted when the friars agreed to submit to such demands, with the right on the part of the parish clergy to withdraw the grant should the agreement be violated. For outstanding instances of this procedure, cf. Eubel, *Röm. Quartalschrift,* IX (1895), 395 ff.; Sutter, *Dominikanerklöster auf d. Gebiete d. heut. Schweiz im 13. Jahrh.* (München, 1893), pp. 30 f.; Sdralek, *Strassburger Diöcesansynoden* (Freiburg, 1894), pp. 20 f.; Mabillon, *Vetera analecta* (Paris, 1723), p. 484. Among the twenty-seven charges of oppression brought by Gregory IX against prelates and others in his two bulls *Nimis iniqua* and *Nimis prava* (cf. note 57), may be mentioned the following: (1) they demand that the friars confess to them and receive communion from them in the parish church like the ordinary faithful; (2) they compel the friars to have the funeral rites for deceased members celebrated in the parish church, with burial in the parish cemetery, and should anyone deceased have chosen to be buried elsewhere, they compel them to have the last rites performed first in the parish church, *ut oblatio suis usibus cedat;* (3) they demand that newly ordained priests say their first mass in the parish church; (4) they deprive the friars of the offerings received from the faithful during the solemn celebration of mass; (5) they claim a right to the ornaments of the altar and ecclesiastical books, though these have been donated to the friars unconditionally; (6) they threaten to institute chapters for the correction of the friars and demand an oath of fidelity and obedience from their superiors; (7) they excommunicate their benefactors; (8) they demand from the friars a share of the fruits of their gardens and tax their convents as though they were the dwellings of Jews. "Non desunt plerique tam ecclesiarum praelati quam alii, qui, caeca cupiditate seducta, propriae aviditati subtrahi reputantes quicquid praedictis fidelium pietas elargitur, quietam ipsorum multipliciter inquietant" is the Pope's bitter reproof.

to preach and hear confessions in the churches connected with their monasteries, together with the right to bury in their churches and cemeteries those who should wish to be buried there. This freedom to preach extended, moreover, to open areas, that is, public places and parochial churches. These extensive privileges were a departure from the traditional discipline of the Church, according to which every species of parochial activity taken out of the hands of the parochial clergy was an infringement on their rights, and naturally intensified the opposition of the clergy who, because of the devotion and generosity of the faithful toward these orders, considered themselves injured first and foremost in their temporal rights.[51] It is true, the Dominican Constitutions of 1228 [52] and the Rule of St. Francis [53] forbade the friars to preach in any diocese without the permission and consent of the bishop thereof. These provisions, however, seem to have been suspended by the papal privileges and were particularly disregarded in those places where the clergy and bishops manifested a disposition of ill feeling. If the friars enjoyed a high degree of popularity, this can be attributed, apart from their training, to only one fact—their zeal in giving the people what they hungered for, religious instruction. The popes saw in these two orders an instrument of the first rank for supplying this greatest need of the thirteenth century; hence their generosity in loading them with privileges and in protecting them against those who would defeat the purpose of their institution. On the other hand, that the friars in their zeal at times overstepped their bounds and abused their privileges, cannot be denied. This is particularly true in the matter of burials and their eagerness to assist in drawing up wills and testaments, especially in the case of those who had been blessed with an abundance of this world's goods.

The clergy complained: (1) that the friars lure and admit to their churches for divine services on Sundays and holydays faithful of other parishes who, therefore, do not on those days attend services in their own

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[51] These papal privileges were not the product of the thirteenth century. They were rather the organic development of legal concessions made in favor of religious communities of the eleventh and twelfth centuries, monks and canons regular who exercised the parochial ministry as individuals and not as societies. It was these privileges and particularly the privilege of exemption that were at the bottom of the controversy between the two orders of clergy. Müller, pp. 491 f. On the subject of privileges and exemptions, cf. Schreiber, *Kurie und Kloster im 12. Jahrh.*, Stuttgart, 1910; *id.*, "Studien zur Exemtionsgeschichte der Zisterzienser," in *Zeitschr. d. Savignystiftung f. Rechtsgeschichte*, XXXV, kan. Abt. IV, 74–116; Bierbaum, *Bettelorden u. Weltgeistlichkeit an d. Universität Paris*, Münster, 1920; Breitschopf, "De regularium exemtione," in *Studien u. Mitteilungen aus dem Benediktiner- u. Zisterzienserorden*, XXI (1900), 78 f.; Mathis, *Die Privilegien d. Franziskanerordens bis zum Konzil von Vienne*, Paderborn, 1928; Dobiache-Rojdesvensky, *La vie paroissiale en France au XIII^e siècle*, Paris, 1911.

[52] Denifle, *Archiv*, I, 224.

[53] *Regula bullata*, cap. 9. *Testamentum*, cap. 3.

parish churches as they are bound to do;[54] (2) they preach on the day and at the hour when the prelates preach, thus not only showing disrespect to the prelates but also giving occasion that the prelates have fewer listeners than they; (3) they preach on Sundays and holydays in their churches and in public places at an hour when the people should be in their own parish churches; (4) they preach in the parish churches before the offerings of the faithful are collected, thus defrauding the clergy; (5) they visit, often surreptitiously, those who are ill and in danger of death and draw up testaments or wills, thus using their influence in these matters to the detriment of the clergy; (6) they not only permit but often seek the burial in their own cemeteries of parishioners not belonging to them, without turning over to the clergy the *portio canonica* as the law requires; (7) they speak disparagingly of the clergy and seek to turn the people away from them, thus luring them to their own places of worship; (8) they hear confessions in the parochial churches without the permission of the bishops and clergy, and without regard for the decree of the general council.[55] These and other complaints had been made to Innocent IV at the General Council of Lyons (1245).[56] What weight they had with him is indicated by the fact that two months after the dissolution of the council (September 17, 1245) he renewed the two bulls *Nimis iniqua* and *Nimis prava* of Gregory IX (the former published August 21, 1231, the latter between 1227 and 1234) in which he brought twenty-seven charges of oppression against prelates and others and insisted on their discontinuance.[57] Similar complaints with a determined request that the mendicants be stripped of their privileges were made at the Second Council of Lyons (1274). Gregory X, however, decided to leave the matter in the hands of the general of each order.[58]

In its conflict with the two mendicant orders the University of Paris

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[54] This stand of the clergy was in accordance with the earlier, and in some localities also with the contemporary, discipline of the Church, by which the faithful were bound to attend at least one mass on Sundays and holydays in their own parish church. The discipline found expression in a decree of the Synod of Nantes (7th cent.), cc. 4, 5, C. IX, q. 2. With the privileges granted to religious orders, especially the Dominicans and Franciscans, the obligation fell into desuetude. In the sixteenth and seventeenth centuries we find it among certain provincial and diocesan regulations, particularly in Germany (c. 2, Extravag. comm., I, 9), but even here the obligation had ceased to exist.

[55] Fourth Lateran Council, canon 21. Denzinger, no. 437. For the complaints, cf. Denifle, *Chartularium Universitatis Parisiensis*, I, no. 250. The provisions of the bull *Super cathedram* governing the hearing of confessions removed one chief source of the conflict. Everyone who henceforth heard confessions after he had complied with the required conditions of the bull is a *sacerdos proprius*.

[56] Hefele-Leclercq, VI, 165 f.

[57] Cc. 16, 17, X, De excess. praelat., V, 31. For the bull of Innocent IV, cf. *Bull. Ord. Praed.* I, no. 100.

[58] Denifle, *Chartul.*, I, 288 note. Reichert, *Litterae Encyclicae Magistrorum Generalium* (Romae, 1900), pp. 96–100.

needed allies, which it readily found in the ranks of the bishops and clergy.[59] Innocent IV, who had hitherto held the orders in high esteem, now, for some reason not yet sufficiently explained, changed his attitude toward them and on November 21, 1254, two weeks before his death, issued the bull *Etsi animarum*, by which he withdrew their privileges in regard to preaching, hearing of confessions, and burial rights.[60] One of the first official acts of his successor, Alexander IV, was to revoke it and restore to the friars their privileges by the bull *Nec insolitum est* (December 22, 1254).[61] At the end of their struggle with the University of Paris, the friars found themselves stronger than ever.[62] Supported by papal approval, they could now preach and hear confessions in the parochial churches even against the will of the clergy. In his bull *Ad fructus uberes* (December 13, 1281), Martin IV extended to the priors provincial and ministers provincial in union with their definitors the privilege, hitherto reserved to the heads of the orders only, of sending out preachers and confessors and strictly forbade anyone to interfere with or hinder the work of the friars.[63] The result was a new outbreak of opposition among the bishops and clergy, especially in France.[64] This *modus vivendi* continued till Boniface VIII issued the constitution quoted above. The question was dealt with again in the Fifth Lateran Council (1512–17) and was definitively settled by the Council of Trent.

CANON 3

Summary. Mendicants who in future, even with Apostolic authority, pass over to non-mendicant orders and those also who already have passed over, have no voice in the chapter; nor may they hold office of any kind, or even exercise the *cura animarum*.

***Text*. That those who profess poverty in any order may the more willingly strive to persevere in the vocation in which they have**

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59 Seppelt, "Der Kampf d. Bettelorden an d. Universität Paris seit d. Mitte d. 13. Jahrh.," in *Kirchengeschl. Abhandl.*, III (Breslau, 1905), 199–241; VI (1908), 75–139; Bierbaum, *Bettelorden u. Weltgeistlichkeit an d. Universität Paris*.

60 Denifle, *Chartul.* I, no. 240. Cf. also no. 236.

61 *Ibid.*, no. 244.

62 *Ibid.*, nos. 247, 249.

63 *Ibid.*, no. 508. With reference to the long and bitter controversy aroused by this bull regarding the interpretation of its last paragraph, wherein the Pope declares that the faithful who confess to the friars are nevertheless bound to confess also *saltem semel in anno sacerdoti proprio*, but does not specify whether in accordance with the decree *Omnis utriusque sexus* (IV Lateran, canon 21) they are bound to confess *sacerdoti proprio* also *omnia peccata sua* which they had previously confessed to the friars, cf. Paulus, *Welt- u. Ordensklerus beim Ausgange d. 13. Jahrh. im Kampfe um d. Pfarr-Rechte*, Essen-Ruhr, 1900.

64 Finke, *Röm. Quartalschr.*, IX (1895), 171–82; Hitzfeld, "Krise in den Bettelorden im Pontifikat Bonifaz VIII," in *Hist. Jahrbuch d. Görres-Gesellschaft*, XLVIII (1928), 1–30; Hefele-Leclercq, VI, Appendix II, 1472.

been called, and those who pass over to a non-mendicant order may live in the same more quietly the more the ambition productive of discord and schism is repressed in them, we, with the approval of the holy council, decree that any mendicants who in the future, even with Apostolic authority, pass over to non-mendicant orders, and those also who thus far have passed over, though these now hold therein the office of prior, administrator, or any other office, or have charge of the *cura animarum,* have no seat nor a voice in the chapter even though this be willingly granted them by the others. We decree, moreover, that they may not continue in or hold the office of prior or any other office previously held by them even as vicars or ministers or *locum tenentes,* and that they may not exercise the *cura animarum* either *pro se vel pro aliis.* Any action in contravention of this decree is *ipso jure* null and void, *quovis privilegio non obstante.* The present constitution, however, we do not wish to be extended to those mendicant orders that have been forbidden by the Apostolic See to receive henceforth any more persons to profession, and to whom it has granted general permission to pass over to other approved orders.[65]

CANON 4

Summary. Bishops must each year make a visitation of all monasteries of nuns in their diocese; those exempt and subject only to the Apostolic See, to be visited by the authority of that see; those not exempt, by their own authority, and others that are exempt to be visited by those to whom they are subject.

Text. Considering that where discipline is despised religion becomes shipwrecked, we deem it imperative to make some provision, lest through such contempt on the part of those who espouse themselves to God by vow, something inconsistent be found that may place a stain on the regular life and justly offend the divine Majesty. Wherefore, with the approval of the holy council, we decree that bishops must each year make a visitation of all monasteries of nuns in their diocese; those exempt and subject only to the Apostolic See, to be visited by the authority of that see; those not exempt, by their own authority, and others that are exempt, by those to whom they are subject. The visitors shall exercise particular care that the nuns (some of whom, we regret to say, we have heard practice excess in this) do not wear silk garments, sandals, long and braided hair, and variegated headdress; that they do not attend dances and the banquets of seculars; do not during the day or night go through villages and public places or otherwise lead a luxurious life. They shall diligently remove them from the evil ways and allurements of the world and exhort them to the cultivation of the virtues in their monaster-

[65] On the last portion of this decree, cf. canon 23 of the Second Council of Lyons.

ies. For the observance of all these things we command the visitors to compel the nuns by suitable measures, notwithstanding exemptions and privileges of whatever nature; by which, however, we do not wish to create hardships *quoad alia*. We decree, moreover, that anyone chosen to the office of abbess in monasteries in which the custom prevails that abbesses be blessed, that such a one must receive that blessing within one year from the time of her confirmation, otherwise (unless there be a reasonable cause for further delay) the one so chosen shall be deprived of the office by those to whom such power of deprivation belongs. Canonical provision covering this point ought to be made in the monasteries. We command that those women also who are commonly called secular canonesses (*canonicae saeculares*) and who, like the secular canons, make no renunciation of their private possessions and no profession of any kind, be visited by the ordinaries of the localities;[66] if they are not exempt, by their own authority, if exempt, by the authority of the Apostolic See; by this, however, we do not intend to approve their status, rule, or order. We command the visitors, in making their visitations, to be content with two notaries, two clerics from their own church, and four other upright and competent men. Those who presume to hinder the visitors in the aforesaid task or in any part thereof, unless, on being warned, they desist, are *ipso facto* excommunicated, all privileges, statutes and customs to the contrary notwithstanding.[67]

CANON 5

Summary. Women, commonly known as Beguines, are forbidden, under penalty of excommunication to be incurred *ipso facto*, to continue the form of life chosen by them or to return to it at any time in the future. The same penalty is incurred by those religious who in any way show them favor or encourage that life.

Text. It has become known to us on trustworthy authority that among the women commonly known as Beguines (who, since they promise obedience to no one, do not renounce their possessions and do not make profession of any approved rule, are not religious at all though they wear the garb of Beguines and are attached to certain religious to whom they are especially attracted), there are some who, as if led by a peculiar insanity, argue and preach on the Holy Trinity and the divine essence and, in regard to the articles of faith and the sacraments of the Church, give expression to opinions that

[66] As there were canons regular and secular, so were there also canonesses regular and secular. Cf. the decree of Boniface VIII, c.43, ¶ 5, VI°, De elect., I, 6. Also art. "Canons and canonesses regular" in *Cath. Encyclopedia.*

[67] This decree concerns itself with the female branch of the Order of St. Benedict, as the decree *Ne in agro Dominico*, no. 12 of the second series of this council, deals with the male branch of that order.

are contrary to Catholic belief, thereby deceiving in this matter many simple people and leading them into divers errors, and under the cloak of sanctity do many other things productive of danger to souls. From various sources we have learned of the pernicious character of their teaching and justly regard them with suspicion. Therefore, with the approval of the holy council, we forever prohibit their mode of life and absolutely remove it from the Church of God, and expressly enjoin these and other women under penalty of excommunication to be incurred *ipso facto* that they do not any longer follow the mode or manner of life chosen by them at an earlier period or return to it in the future in any form. Under a similar penalty of excommunication to be incurred *ipso facto,* we strictly forbid the aforesaid religious who are said to have favored and encouraged these women to embrace the Beguinage state, that they do not by aid, advice, or in any manner induce any women to embrace the aforesaid mode of life or to assume it *de novo,* notwithstanding any privilege against which the aforesaid provisions might militate. If, however, there are some faithful women among them, whether vowed to chastity or not, who live uprightly in their hospices and wish to serve God in the spirit of virtue and humility, this may be permitted them according as the Lord inspires them and we do not wish that this instruction should affect them.

CANON 6

Summary. The sect known as Beghards and Beguines, existing in Germany, and eight of their errors are condemned. Diocesan authorities and inquisitors are warned to exercise vigilance in regard to them.

Text. Cherishing the desire that the Catholic faith should prosper and that heresy should be extirpated from among the faithful, it was not without great displeasure we heard that an abominable sect of wicked men, commonly called Beghards, and of faithless women, known as Beguines, has sprung up in Germany through the father of evil deeds, holding and maintaining in its sacrilegious and perverse teaching the following errors: (1) Man can in the present life acquire such a degree of perfection that renders him absolutely impeccable and unable to progress further in grace; for, as they say, if incessant progress were possible, then one could become more perfect than Christ; (2) man need not fast or pray after he has arrived at such a degree of perfection, because then sensuality is so perfectly subject to the spirit and to reason that man may freely concede to the body whatever it desires; (3) those who have attained the aforesaid degree of perfection and spirit of liberty, are not subject to human obedience, nor are they bound to any precepts of the Church, because, as they say, where the spirit of the Lord is, there is liberty; (4) man can in this life attain the same

final beatitude *secundum omnem gradum perfectionis* that he will attain in the life hereafter; (5) every intellectual nature is in itself naturally blessed (*beata*), and the soul does not need the light of glory to elevate it to see God and to enjoy him blissfully (*beate*); (6) to practice the virtues is an act that belongs to the imperfect man, the perfect soul divests itself of the virtues; (7) to kiss a woman is a mortal sin since nature is not inclined to it; but an *actus carnalis*, since nature is inclined to it, is not a sin, especially when the one performing it is tempted; (8) at the elevation of the body of Christ one ought not to rise or exhibit reverence toward it, for, as they say, it would be a sign of imperfection to descend from the height and purity of contemplation in order to think about the sacrament of the Eucharist or about the sufferings of Christ.[68] Under the cloak of sanctity they say and do also other things that offend the divine Majesty and constitute a grave danger to souls. But, since the duty of the office committed to us obligates us to rid the Catholic Church of that detestable sect and its errors, that it may not by further dissemination corrupt the hearts of the faithful, we, with the approval of the holy council, absolutely reprobate and condemn it with all the above mentioned errors, strictly forbidding any and every one to hold, approve or defend them in the future. Those who act in contravention of this shall be punished in accordance with the canonical prescriptions. Moreover, the diocesan authorities and inquisitors of the localities in which the Beghards and Beguines are known to reside, shall exercise their office with painstaking care in regard to them, making inquiries regarding their life and teachings and what they hold concerning the articles of faith and the sacraments of the Church. On those who are found guilty, unless they repent by an immediate abjuration of the aforesaid errors and make suitable satisfaction, they shall impose due punishment.

Comment. The two foregoing decrees were directed against the Beguines and Beghards. Owing to the widespread religious revival, the female convents of the Benedictine order and the canonesses could not, since the beginning of the thirteenth century, meet the desires of religiously inclined women, chiefly because they were open only to the daughters of the aristocracy and also because in proportion as they became charitable institutions religious observance declined, and hence ceased to be the choice of persons imbued with fresh religious fervor. The paths, therefore, led to the Premonstratensians and Cistercians. But these soon found that they had on their hands more monasteries for women than they could care for. The former in a general chapter decided to accept no more recruits, a decision that was confirmed by Innocent III in 1198, while the latter in the general

[68] Denzinger, nos. 471–78.

chapter of 1228 forbade the construction of any more monasteries for women.[69] Under these circumstances, thousands of religiously inclined women, virgins and widows, finding themselves shut out from all regular religious life, formed semi-monastic institutions of their own. Their earliest foundations were in the Netherlands. Theirs was not an approved order and they took no vows, but they lived the common life, wore a habit, and devoted themselves to prayer and good works. Many associated themselves with the third orders of St. Dominic and St. Francis. The male branch was known by the name of Beghards. All of them were laymen and, like the women, took no vows and lived the common life. The majority were of humble origin; many had seen their best days and might be termed worn-out workingmen. Drawn from the oppressed class, it is not surprising that many were easy subjects to evil influences and that some worked out ideas at variance with orthodoxy. Some associated themselves with the Fraticelli, others with the Brethren of the Free Spirit. For a long time before their condemnation by the present council, the heretical tendencies of the Beghards and Beguines had occupied the attention of provincial synods, especially in Germany. The old charge that the Dominican, Master Eckhart, was in contact with them and even indorsed certain Beghard tenets, has been shattered forever by Father Denifle.[70]

The sentence of Clement V was mitigated by John XXII, who permitted women against whom no suspicion could be lodged, again to adopt the life and live after the manner of the Beguines and forbade the ordinaries to molest them.[71]

CANON 7

Summary. Charitable institutions must not be permitted to go to ruin or their revenues to be squandered. Their rectors are to be compelled by the ordinaries to obtain the return of their rights and possessions. In future no such institution may be granted to the secular clergy as a *beneficium* except in two cases. This constitution does not apply to institutions of religious and military orders. Old customs regarding the divine offices and the sacraments in these institutions are to be preserved.

Text. **It happens occasionally that the rectors of pilgrim-houses, leper-houses, and almshouses or hostelries—the care of these insti-**

[69] Schnürer, *Kirche und Kultur im Mittelalter*, II (Paderborn, 1929), 483; Decker, *Die Stellung d. Predigerordens zu d. Dominikanerinnen (1207–1267)*, Vechta, 1935; Finke, *Die Frau im Mittelalter*, Kösel, 1913; Bücher, *Die Frauenfrage im Mittelalter*, Tübingen, 1910.

[70] *Archiv*, II, 616 ff.

[71] C. un., Extravag. comm., III, 9. For the more recent literature: Greven, *Die Anfänge der Beginen*, Münster, 1912; *id.*, "Der Ursprung d. Beginenwesens," in *Hist. Jahrbuch*, XXXV (1914), 26–58, 291–318; Endres, *Hist.-polit. Blätter*, 1915, II, 19–28; Asen, "Die Beginen in Köln," in *Annal. d. Hist. Vereins v. Niederrhein*, CXI (1927), 81–180; CXII (1928), 71–148; CXIII (1928), 13–96; *Dict. de théologie cath.*

tutions having been much neglected—make no effort to obtain the return of their rights and possessions from the hands of usurpers, and indeed permit them to go to loss and the buildings to ruin, and, forgetting that these places have been founded and endowed by the generosity of the faithful that the poor and those afflicted with leprosy might find a home therein and be supported by the revenues thereof, do not hesitate to arrogate these revenues to their own uses when those things that have been given by the faithful for a certain purpose ought to be applied to that purpose and to no other (*salva quidem sedis apostolicae auctoritate*). Detesting such negligence and abuse, with the approval of the holy council we therefore decree that they whose duty it is by right or by law, by legitimate custom or by privilege of the Holy See, strive to reform those places in the matters aforesaid, recover what has been usurped and alienated, and compel the rectors to receive the poor people and maintain them to the extent that the revenues of those institutions will permit. Should they prove negligent in this matter, we enjoin the ordinaries of the localities that, even though the aforesaid institutions should enjoy the privilege of exemption, they carry out *per se ipsos vel alios* each and all of the aforesaid instructions and compel the rectors, those not exempt, by their own authority, those exempt *et alios privilegiatos*, by the authority of the Apostolic See, to observe the foregoing directions; those acting in contravention, whatever may be their status or condition, and their abetters shall be restrained by ecclesiastical censure and other legal means. By this, however, we do not wish to create any disadvantages in the matter of exemptions and privileges *quoad alia*.

That the foregoing instructions may be the more promptly observed, none of these institutions shall in the future be handed over to the secular clergy as a *beneficium*, even though this has been the custom in the past (a custom that we condemn), unless it is provided otherwise in the documents relating to their foundation or unless the office of rector is filled by election. But their management shall be entrusted to prudent, competent, and reputable men, whose knowledge, willingness, and ability will assure a just administration and protection of these institutions, their possessions and rights, and who are not likely to divert their revenues into other channels. All of these things we make a matter of conscience in the case of those to whom the appointment of administrators of such institutions belongs. Those to whom the administration is entrusted shall be bound by oath that they will take proper care of the institutions, make an inventory of their properties, and give an account each year of their administration to the ordinaries or to those to whom the institutions are subject or their representatives. Any action in contravention of these instructions we declare null and void.

The foregoing instructions we do not wish to be applied to the

hostelries (*hospitalia*) of religious and military orders, the rectors of which, however, we command in virtue of holy obedience that in them they exercise due hospitality and provide for the poor in accordance with the rules and old observances of their orders, to the carrying out of which provision they shall be compelled by severe disciplinary measures by their superiors, statutes and customs to the contrary notwithstanding.

Moreover, if there are hostelries having from olden times an altar or altars and a cemetery, and priests celebrating and administering to the poor the sacraments of the Church, or if the parochial rectors have been accustomed to exercise these ministries therein, it is our intention that this old custom be continued.

CANON 8

Summary. If the ordinary accepts anyone presented to any church by one having the right of presentation and the latter does not assign to the one presented a suitable portion of the revenues of that church wherewith to meet his obligations, then the ordinary himself shall make such assignment.

Text. That the constitution [72] be observed which forbids that anyone *etiam ad exemptorum praesentationem* be admitted to some church, custom to the contrary notwithstanding, unless a portion of the revenues of that church has been assigned to him in the presence of the ordinary, wherewith he may be able to meet his obligations to the ordinary and also have a suitable means of livelihood for himself, we, with the approval of the holy council, take occasion to explain it and to add a few considerations. Ordinaries are strictly forbidden to accept anyone presented by any ecclesiastical person having the right of presentation, unless within a certain convenient period of time to be specified by the ordinaries, the *praesentantes* in their presence have assigned to the ones presented a suitable portion of the revenues of the church. If within the time specified the *praesentantes* fail to assign such a portion, that their failure may not prove injurious to the ones presented, we decree that the ordinaries ought then (unless another canonical obstacle stands in the way) to accept those presented, and the authority of assigning such a portion shall devolve upon them *in poenam praesentantium.* We command the ordinaries, moreover, that in assigning this portion they exercise due moderation and be not influenced knowingly by likes, dislikes, or otherwise. In the churches of priories or in the churches of other places, regular as well as secular, in which the religious or others, to whom the revenues of such places belong, have been accustomed to fulfil the aforesaid obligations, the above instructions do not apply, but all the obligations that might encumber the priests

[72] *Suscepti regiminis* of Clement IV, c.1, VI°, De praeb., III, 4.

or vicars of those churches, if the said assignment has been made, the aforesaid religious or others shall be bound to bear fully, to treat in a becoming manner the priests or vicars, and to supply them with sufficient and suitable subsistence. To the full observance of all this, especially of what has been said with regard to the assignment of a suitable portion by the ordinaries, we wish that the aforesaid religious and all others be compelled by the ordinaries by ecclesiastical censure, exemptions or privileges or statutes notwithstanding.

CANON 9

Summary. If rectors, whose duty it is to correct, shall prove negligent, then their superiors ought to be concerned that the canonical hours are chanted with devotion in cathedral, regular, and collegiate churches and that in other churches the *officium diurnum et nocturnum* be properly celebrated.

Text. We are greatly disturbed over the fact that as a result of the negligence of some rectors, which is usually productive of much mischief among the inferior clergy, many ministers of the churches have discarded the modesty of clerical decorum. While they ought to offer to God a sacrifice of praise with purity of conscience and devotion of mind, they presume to say or chant the canonical hours by hastening through them, by omitting portions of them, and by intermingling vain, vulgar, and worldly conversation. They come late to the choir, frequently leave it without good reason before the office is finished, absent themselves through a desire to hunt, and, as if having no regard for the clerical office, presume to celebrate the divine offices or to be present at them with an utter lack of devotion. Some clerics as well as laymen, especially on the vigil of certain feasts, when they ought to be in the church occupied in prayer, do not hesitate to hold indecent dances in the cemeteries of the churches and at times to sing ballads and perpetrate many other excesses from which result sometimes the violation of churches and cemeteries and various other crimes, to say nothing of their evil effects on the ecclesiastical office; all of which is an offense to the divine Majesty and a scandal to the people of the neighborhood. In many churches, moreover, the vessels, vestments, and other articles necessary for divine worship are improperly cared for. Therefore, that such transgressions may not flourish and serve as an example to others, we, with the approval of the holy council, forbid that this be done in the future and decree that those whose duty it is, namely, the local ordinaries in the case of such transgressions on the part of those not exempt, and in the case of those exempt or otherwise privileged, the superiors of these, exercise special care that the above mentioned irregularities be corrected; that in cathedral, regular, and collegiate churches the canonical hours be chanted with devotion

and in the other churches the *divinum diurnum et nocturnum officium* be duly and consistently celebrated if they wish to escape the anger of God and of the Apostolic See. Those who resist corrections shall be punished with ecclesiastical censure and other suitable measures. In all things that pertain to divine worship and to the reformation of morals, as well as to the inviolability of churches and cemeteries, the ordinaries and local superiors shall see to it that the sacred canons are strictly observed.[73]

CANON 10

Summary. Clerics who are members of the household of a cardinal or bishop may say the same divine office as they.

Text. With the approval of the holy council we grant to clerics, religious as well as others, who are members of the household of a cardinal of the Holy Roman Church or of a bishop in communion with the Apostolic See, the privilege of saying validly the same canonical office that is said by the cardinal and the bishop, nor are they obliged to say any other.[74]

CANON 11

Summary. Directs that schools be established in the Roman curia, at Paris, Oxford, Bologna, and Salamanca, where Catholic *magistri* shall teach the Hebrew, Greek, Arabic, and Chaldaic languages, and gives ways and methods for the support of these instructors.

Text. Among the cares that weigh heavily upon us, not the least is our solicitude to lead the erring into the way of truth and with the help of God to win them for Him. This is what we ardently desire, to it we zealously direct the energies of our mind, and about it we are concerned *diligenti studio et studiosa diligentia.* We realize, however, that for the attainment of our purpose an exposition of the Holy Scriptures is particularly appropriate and a faithful preaching thereof very opportune. Nor are we ignorant that even these will prove of no avail if directed to the ears of one speaking an unknown tongue. Therefore, following the example of Him whose representative we are on earth, who wished that the Apostles, about to go forth to evangelize the world, should have a knowledge of every language, we earnestly desire that the Church abound with Catholic men possessing a knowledge of the languages used by the infidels, who will be able to instruct them in Catholic doctrine

[73] The Second Council of Lyons dealt with same subject in canon 25.

[74] The reason for this privilege was the circumstance that the form and text of the daily office of the Breviary were not uniform in the different dioceses and religious orders, which made the saying of the office in common a difficult, and at times an impossible, task.

and by holy baptism form them into a body of Christians. Therefore, that a knowledge of these languages may be easily obtained, we, with the approval of the holy council, direct that for the teaching of the languages named below, schools be established wherever the Roman curia may happen to reside [75] and also in the Universities of Paris, Oxford, Bologna, and Salamanca, decreeing that in each of these Catholic men possessing a sufficient knowledge of the Hebrew, Greek,[76] Arabic, and Chaldaic languages be engaged, two for each language, who shall direct the schools, translate books from these languages into Latin, and teach these languages to others who, on being sufficiently instructed in them, may propagate the faith among the infidels. As regards the support of these instructors, we direct that those in the Roman curia be maintained by the Apostolic See, those at Paris by the King of France, those at Oxford by the King of England, Scotland, Ireland, and Wales, those at Bologna and Salamanca, by the prelates, monasteries, chapters, exempt and non-exempt religious communities, and rectors of churches of Italy and Spain respectively, a tax in proportion to the needs to be imposed on each, privileges and exemptions to the contrary notwithstanding, by which, however, we do not wish to create a disadvantage *quoad alia.*

Comment. The reason for the issuance of this decree must be attributed, for the most part at least, to the pre-conciliar activity along this line of Raymond Lully (d. *ca.* 1316), who, inspired with an extraordinary zeal for the conversion of the Mohammedan world, had for many years advocated the establishment of schools in universities and monasteries for the study of Oriental languages.[77] Besides meeting these people on their own ground in the matter of the spoken word, he advocated also the composition and the translation into these languages of works of an apologetic nature. A contributing factor was Pierre Dubois (Latinized, Petrus de Bosco), French jurist and publicist and a supporter of Philip IV against Boniface VIII and the Templars.[78] Lully himself, a layman, had spent many years as a missionary in the Orient among the Mohammedans, and

[75] For an explanation of the "ubicunque Romanam curiam residere contigerit," cf. Denifle, *Die Universitäten d. Mittelalters*, pp. 301 ff.

[76] Many MSS omit *graecae* after *hebraicae;* so also does Friedberg in his edition of the *Corpus Jur. Can.* That it was in the original text there can be no doubt (Denifle, *Chartul.*, II, no. 695, note 1). Positive proof to this effect we have in a letter of John XXII, dated July 25, 1326, in which he speaks of two professorships for the Greek language (Denifle, *l. c.*, no. 857). The Council of Basle also, renewing in its nineteenth session (September 7, 1434) this decree of Vienne, speaks of the *lingua graeca.*

[77] Altaner, "Raymundus Lullus u. d. Sprachenkanon (can. 11) d. Konzils v. Vienne," in *Hist. Jahrbuch*, LIII (1933), 190–219. For the recent literature on Lully, cf. Überweg-Geyer, *Die patristische u. scholastische Philosophie* (Berlin, 1928), pp. 758 f.

[78] Altaner, *l. c.*, pp. 212 ff.

thus saw at first hand the need of a knowledge of the languages for efficient work. But what no doubt convinced him more than anything else of the feasibility of his project was the successful work that was being done in the schools for Oriental languages, especially the Hebrew and Arabic, established by the Dominicans as early as 1250.[79]

In a general way it may be stated that this decree of the council remained a dead letter. There seems to be no doubt that several earnest attempts were made to put the decree into execution in the papal curia in Avignon. But these efforts proved fruitless so far as the missions were concerned. The same can be said of Paris, despite the exertions of John XXII. In regard to the other three universities mentioned, we have no evidence to show that even so much as a beginning was made to carry out the prescriptions of the decree.[80]

CANON 12

Summary. Christian princes should restrain the Saracens subject to them from publicly invoking the name of Mohammed and from making pilgrimages to a certain shrine.

Text. It is an insult to the Holy Name and a disgrace to the Christian faith that in some parts of the world subject to Christian princes, in which the Saracens live sometimes apart from and sometimes intermingled with the Christians, their priests, each day at a certain hour, in their temples or mosques in which the Saracens assemble to worship the false Mohammed, invoke and extol in a loud voice and in the hearing of Saracens and Christians the name of Mohammed and there make public profession of their faith in him. Moreover, great multitudes of Saracens from far and near flock to a place where formerly a Saracen was buried, whom they venerate and worship as a saint, a performance that is a detriment to our faith and a grave scandal to the faithful. Since these things are offensive to God and therefore not to be tolerated, we, with the approval of the holy council, strictly forbid that such things be done hereafter in Christian lands, and command each and all of the Christian princes under whose jurisdiction the said Saracens are

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[79] Altaner, *Die Dominikanermissionen d. 13. Jahrh.* (Habelschwert, 1924), pp. 91 ff.; Denifle, *Die Universitäten*, pp. 495 ff. It may be mentioned that Pope Pius XI in his encyclical *De studiis rerum orientalium provehendis* of September 8, 1928, points to the decree of Vienne, in which he finds the program of his own newly created Oriental Institute foreshadowed. The text of the encyclical is in the *Acta Apostolicae Sedis*, 1928. English translation in *Am. Ecclesiastical Review*, LXXX (1929), 62–74, which, however, has erroneously "Vienna" for "Vienne," and "Bonn" for "Bologna."

[80] Altaner, "Die Durchführung d. Vienner Konzilsbeschlusses über d. Errichtung v. Lehrstühlen f. orientalische Sprachen," in *Zeitschr. f. Kirchengeschichte*, LII (1933), 226–36; *id.*, "Sprachstudien u. Sprachkenntnisse im Dienste d, Mission," in *Zeitschr. f. Missionswissenschaft*, XXI (1931), 122 ff.

and the above mentioned performances are carried on, that they as zealous promoters of the Catholic faith, considering the disgrace that is heaped not only upon them but upon the Christians as well, remove that disgrace from their territories by expressly forbidding that any of the aforesaid performances be attempted or carried on in the future by anyone residing within the limits of their territory. Those who presume to do otherwise shall be punished by the princes for their irreverence, so that others, filled with fear by their example, may be deterred from a similar presumption.

CANON 13

Summary. The inquisition must be conducted by the bishops and inquisitors, and one may act and make inquiries without the other. However, one without the other may not consign anyone to harsh imprisonment. Each prison shall have two chief guards and for each room there shall be two keys. The guards, before assuming office, must take an oath that they will perform their duties conscientiously; the oath must be taken also by their assistants. Bishops and inquisitors who prove delinquent or knowingly perpetrate an injustice are to be punished.

Text. Many complaints have come to the Apostolic See that some inquisitors, deputed by us to suppress heresy, sometimes so exceed the authority of their office that what has been wisely provided by us as an instrument for the well-being and increase of the faith, has in reality become a detriment.

(1) Wherefore, that the work of the inquisition may be the more successful the more earnestly and cautiously it is executed, we decree that it be conducted by the diocesan bishops and by the inquisitors appointed by the Apostolic See (temporal advantage and partiality of every description being excluded), so that either one of the above mentioned may without the other cite, arrest, and hold for safe-keeping, even by shackling with chains if this should be deemed necessary, and may make inquiries about those in regard to whom inquiry may be considered advisable. However, the bishop without the inquisitor or the inquisitor without the bishop or his representative, or, *episcopali sede vacante*, the one delegated by the chapter, may not consign anyone to harsh and cruel imprisonment, which would be punishment rather than custody, or subject anyone to torture or proceed to pronounce sentence on anyone, if they are able to co-operate within a period of eight days after they have sought each other's co-operation; any action in contravention of this is *ipso jure* null and void. But if the bishop or, *sede vacante*, the one delegated by the chapter, cannot or will not personally meet the inquisitor, or if the inquisitor cannot or will not personally meet either of the above mentioned, the bishop or his representative may send to the inquisitor and the inquisitor may send to the bishop or his representative proxies, or either may make known to the other his counsel and approval in writing.

(2) Since, in regard to the custody of the prisons in which heretics are confined, much fraud has lately been committed, we decree that all such prisons, which we wish in the future to be for the common use of the bishop and inquisitor, shall have two chief guards, discreet, diligent, and trustworthy, one to be appointed and provided for by the bishop, the other by the inquisitor, and each of these guards may have a competent and reliable assistant. For each room within the prison there shall be two keys, of which one shall be held by each of the aforesaid guards, who may entrust the keys to their assistants for the purpose of ministering to the incarcerated.

(3) Moreover, the guards, before they assume office, must, in the presence of the bishop or, *sede vacante,* the chapter, and the inquisitor, or those substituted by them, take an oath on the Gospels that in their duties as guards they will exercise the utmost care and solicitude; that one guard will not speak to an incarcerated person *in secreto* except in the presence of the other guard; that they will administer faithfully and without any deduction the provisions allotted to those incarcerated by the rule or what is given them by relatives, friends, or other reliable persons (unless the furnishing of provisions by outsiders is forbidden by the bishop and inquisitor), and that they will not resort to fraud in this matter. The same oath must be taken in the presence of the same persons by the assistants of the guards before they take up the duties of their office. But, since it often happens that bishops have their own prisons which are not at the disposal of the inquisitors, we wish and strictly command that the guards appointed by the bishops or, *sede vacante,* by the chapter, as well as their assistants, shall take a similar oath in the presence of the inquisitors or their representatives. Notaries of the inquisition also shall take an oath in the presence of the bishop and the inquisitor or their representatives to the effect that they will perform the duties of their office faithfully. The same shall be applicable to other persons necessary for the proper performance of the duties connected with the aforesaid office.

(4) While it is a grave matter not to act in the extermination of heresy when its enormity demands action, it is equally grave and deserving of the severest punishment maliciously to impose or anchor that perverseness on the innocent. Wherefore, in virtue of holy obedience and with the threat of eternal malediction, we command the bishop and the inquisitor and those whom they may choose as substitutes, that they proceed discreetly and promptly against those suspected of heresy and do not maliciously or fraudulently anchor that stain of iniquity upon an innocent party. If, through hatred, affection, or temporal interests, and contrary to justice and their own conscience, they fail to proceed against anyone against whom they ought to proceed, or, actuated by the same impulses, presume to annoy anyone in any way by stigmatizing him with the stain

of heresy, besides other punishments to be imposed in accordance with the nature of the offense, the bishop or superior shall incur *eo ipso* suspension from office for a period of three years, others, excommunication, from which, except *in mortis articulo*, they can obtain absolution only from the Roman pontiff and then only on condition that they have made due satisfaction. No privilege in this matter shall avail.

(5) Lastly, we decree, with the approval of the holy council, that all statutes of our predecessors dealing with the inquisition and not in conflict with the above, shall remain in force.[81]

CANON 14

Summary. Determines the age of inquisitors. Those who under cover of their office extort money or on account of the delinquency of clerics seize Church property are to be punished. Notaries, officials, and associates who know of such acts being committed are commanded to report them to superiors. Inquisitors are forbidden to abuse the concession of carrying arms.

Text. Being unwilling that the splendor of the faith be obscured by indiscreet and unjust acts of some inquisitors, we, with the approval of the holy council, decree that in the future the office of inquisitor be committed to no one who has not attained the age of forty years, and we strictly command all commissaries of inquisitors and bishops, that they do not under cover of the office of the inquisition extort money from anyone in any manner whatsoever, nor knowingly attempt on account of the delinquency of clerics to seize Church property and apply it to the treasury of a church. In any action to the contrary in these matters, we decree that they incur *ipso facto* excommunication from which, except *in mortis articulo*, they cannot be absolved until they have made full satisfaction to those from whom the money was extorted, *nullis privilegiis, pactis, aut remissionibus super hoc valituris*. Notaries and officials of the aforesaid office and associates of inquisitors and their commissaries, who know that inquisitors or commissaries have secretly committed such acts, shall earnestly endeavor to correct them *in secreto* if they wish to escape the anger of God and avoid giving offense to the Apostolic See. If, however, they know those things in such a way that they can

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[81] This decree is an adjustment of the relations between the tribunals of the inquisition and those of the bishops. The extraordinary powers acquired by the papal tribunals of the inquisition during the latter half of the thirteenth century, resulted in no little friction and entanglements with the episcopal tribunals. The bishops ruled that without their co-operation no inquiry could be undertaken or sentence imposed by the inquisition. The popes on the other hand, especially Benedict XI, by decrees made the inquisition independent of the bishops and responsible to themselves only, which naturally led to bitter and incessant conflicts.

prove them should they be called on to do so, it is their duty to make them known to the superiors of the inquisitors and their commissaries, who shall be bound to remove from office those found guilty and otherwise duly punish them. Superiors proving negligent in this matter shall be reminded of the above instructions by the local ordinaries whom we strictly command in virtue of holy obedience to make known those things to the Apostolic See. Moreover, we strictly forbid inquisitors to abuse any concession in the matter of carrying arms or to have more officials than are necessary for the proper discharge of their office.

CANON 15

Summary. Officials of communities who favor statutes permitting the demand and compelling the payment of usury with no obligation to make restitution, incur excommunication. They incur the same censure if within three months they do not remove such statutes from the books. Money-lenders must exhibit their account books. Anyone asserting that usury is not a sin is a heretic.

Text. It has come to our knowledge that certain communities, in violation of the law, human and divine, approve the practice of usury and by statutes *juramenta quandoque firmata* not only permit the demand and payment of usury but compel debtors to pay it; thus imposing grave hardships on those who demand the return of the usurious money, and by resorting to other species of fraud in this matter, hinder the return of such money. We, therefore, wishing to put an end to these pernicious practices, with the approval of the holy council, decree that all civil officials of these communities, be they rulers, judges, lawyers, or any others, who in the future make, write, or dictate statutes of this kind or knowingly decide that usury may be paid or in case of having been paid may not be freely and fully restored when its return is demanded, incur the sentence of excommunication. They shall incur the same sentence if they do not within three months remove such statutes from the books of those communities (if they have the power to do so), or if they presume effectively to observe those statutes or customs in any manner.

Moreover, since money-lenders enter secretly and deceitfully into usurious contracts so frequently that they can scarcely be convinced of the evils of usury, we decree that they be compelled by ecclesiastical censure to exhibit their account books for the purpose of ascertaining whether they practice usury.

If anyone should presume obstinately to affirm that it is not a sin to practice usury, we decree that he be punished as a heretic and we strictly command the bishops of the localities and the inquisitors to proceed against those suspected of such error in the same way as they would proceed against those suspected of heresy.

CANON 16

Summary. Archbishops journeying through exempt localities of their province may have the cross borne before them, may bless the people, and hear or celebrate the divine offices.

Text. With the approval of the holy council we permit an archbishop journeying through exempt localities of his province to have the cross borne before him, to bless the people, to hear the divine offices there publicly or privately, to celebrate them *in pontificalibus* and to have them celebrated in his presence *sine pontificalibus*, any privilege to the contrary notwithstanding. Likewise, we permit a bishop in similar places of his diocese to bless the people, to hear the divine offices, to celebrate them and to have them celebrated in his presence, with the understanding, however, that under cover of this concession the archbishop or bishop exercise no jurisdiction in the places exempt, nor in any way annoy the persons exempt or restrict the privileges of exemption. No other right does the archbishop or bishop acquire by this concession.[82]

CANON 17

Summary. Anyone having struck or forcibly seized a bishop, commanded or approved that this be done, been an accomplice or given counsel, is excommunicated. He shall be deprived of all fiefs and of all spiritual and temporal offices and benefices. His male descendants to the second generation are *ipso facto* disqualified from holding ecclesiastical benefices. His estate and the place in which the bishop is detained shall be placed under interdict till he has made condign satisfaction.

Text. If anyone has at the instigation of the devil rashly and with injurious effect struck or forcibly seized any bishop or commanded that these things be done or approved them when done by others or been an accomplice or given advice in this matter or knowingly defended one guilty of such conduct and did not incur excommunication under decrees already published, let him be excommunicated by the authority of the present constitution, any custom to the contrary notwithstanding, a custom which we with the approval of the council regard as a corruption, from which censure he may not, outside the case of *mortis articulo,* be absolved except by the Roman pontiff. He shall, moreover, be deprived of all fiefs and of all spiritual and temporal offices and benefices which he holds from the Church over which the bishop thus offended presides and all these

[82] This decree is an echo of the struggle between the regular and secular clergy. Its restrictions indicate that it was the outcome of abuses on the part of archbishops and bishops when passing through exempt territory, abuses that consisted in annoying and oppressing religious in one way or another and attempting to exercise jurisdiction where they had none. At times papal exemption meant little or nothing, for the malice and machinations of the prelates were often more powerful than a papal decretal.

shall revert to the same Church. His male descendants, even to the second generation, shall without any hope of dispensation be *ipso facto* disqualified from holding ecclesiastical benefices in the city and diocese in which the same bishop resides. His estate also (when it is within one diocese), as well as the place in which the bishop is detained and as long as his detention in that place continues, shall be placed under ecclesiastical interdict till he has made condign satisfaction. If his estate comprises two or more dioceses, that wherein his principal domicile is and that also wherein the crime was committed, if the territory belongs to him, and two other dioceses which belong to the territory of the assailant and which are nearest to the place where the crime was committed, shall be subject to the same interdict. And since his confusion and embarrassment will be in proportion to the extent his offense becomes known, till he has made suitable satisfaction, the one excommunicated and his offense shall be announced publicly in all the churches of the locality in which the crime was committed and in the churches of neighboring cities and dioceses on all Sundays and festival days amid the ringing of bells and the burning of candles. And when he presents himself for absolution, let him come prepared to submit to the punishment to be inflicted and with the help of God to perform the penance imposed. The city that has committed any of the above-mentioned offenses against its bishop, shall be placed under interdict till it has made due satisfaction. Its officials, by whatever name they may be known, if guilty of like offenses, shall incur excommunication from which, outside the case of *mortis articulo,* they may not be absolved except by the Roman pontiff. All of these instructions are to be observed particularly in the case of those who are slayers of bishops, since the punishment in their case ought to be severer than in the case of the aforesaid.

Nor let anyone wonder that we do not inflict severer punishment on those guilty of the aforesaid offenses. It is true that these offenses occur frequently and for many perpetrators an example is necessary, and it is also true that the punishment of the offender ought to be in proportion to the dignity of the one offended, for the bishops are the legates of Christ, they are spiritual fathers, our brethren and co-bishops, the acknowledged pillars of the Church. Nevertheless we wish for the present to temper the rigor of the infliction of many penalties and proceed to impose others if the impudence of the delinquents should demand this.

If anyone in the aforesaid cases has been absolved from the sentence of excommunication *in mortis articulo,* unless, as soon as possible after the recovery of his health, he presents himself to the Roman pontiff to receive his command, he shall again incur *ipso facto* the same censure. Though sufficient provision has been made in the law to govern this matter, we nevertheless take occasion to

call attention to it here, lest someone should plead ignorance of the law on this point.[83]

CANON 18

Summary. Those who capture ecclesiastical persons and detain them till they resign their benefices or prevent those summoned to the Apostolic See from going there, if prelates, shall be suspended for three years from collecting the revenues from their churches; if clerics of lower rank, they shall be deprived of their benefices. The same penalty is to be incurred by those who bring about their own capture to evade a summons to the Apostolic See.

Text. Many serious complaints have come to us that some having temporal authority do not hesitate frequently to capture ecclesiastical persons and to detain them till they resign from their benefices, or prevent those summoned to the Apostolic See *ab homine vel a jure* from going there, seizing them at their departure. Considering, therefore, how derogatory such actions are to our honor, to the honor of the Apostolic See, and to the peace and welfare of ecclesiastical persons, we, with the approval of the holy council, decree that in addition to the penalty of the decree [84] which they incur who do or cause the aforesaid things to be done, they who cause or bring about such things, if they be prelates, shall be suspended for a period of three years from collecting the revenues of their churches. If, on the other hand, they are clerics of lower rank, they shall be deprived *eo ipso* of the benefices obtained; the same penalty to be incurred by those who bring about their own capture by secular authorities in order to have an excuse for disregarding their summons to the Apostolic See. The resignations of benefices extorted in the above manner, though they were accepted and sanctioned by the prelates of those who resigned, are absolutely null and void, and we command the local ordinaries that, after it has become evident to them that some persons subject to their jurisdiction have incurred the aforesaid penalties, they do not delay to publish those penalties and see to it that they are duly complied with.[85]

CANON 19

Summary. Seculars who compel clerics to celebrate the divine offices in territory that is under interdict and invite and compel people of interdicted districts, even those excommunicated, to attend such services, are excommunicated.

Text. Grave complaints have come to us from bishops that some nobles and temporal lords whose territory is under ecclesiastical interdict have masses and the other divine offices celebrated pub-

[83] Cf. C.29, C.XVII, q.4.
[84] Cf. preceding decree.
[85] Kober, *Die Suspension*, pp. 350 f.

licly and solemnly not only in the chapels of their districts but also in collegiate and other churches of prominent localities, inviting and, what is worse, at times compelling now this one now that one to celebrate those offices; and not content with these excesses, they have the people even of the interdicted districts called together by the ringing of bells and by public criers to attend these masses. Some of them also do not hesitate to command, especially their own subjects, though they are under excommunication and interdict, not to leave the churches while the masses are being celebrated therein, even when the celebrants request them to leave; whence it often happens, not without offense to God and scandal to the clergy and people, that the masses remain incomplete. Wherefore, that excesses so grave may not go unpunished and serve as an example to others, we, with the approval of the holy council, restrain with the sentence of excommunication, from which they can be absolved only by the Apostolic See, all who in the future presume to compel anyone in any manner to celebrate the divine offices in places under interdict, or who in the aforsaid manner shall call together any persons who are under excommunication or interdict for the purpose of hearing the divine offices, or who shall forbid those under excommunication or interdict to leave the churches in the course of divine service, and those also who having been warned by the celebrants to leave presume to remain.

CANON 20

Summary. Bishops visiting Cistercian monasteries from motives of hospitality, must be content with the food that is set before them. They are forbidden to oppress exempt and other religious in their canonical visitations. In monasteries from which they may receive procurations, they may, on the days permissible, have meat, but in a house outside the walls of the monastery. If this is inconvenient, then in the monastery but outside the cloister.

Text. With sorrow, we declare, it has come to our knowledge that prelates visiting the monasteries of the Cistercian order, though they are hospitably received and extended every attention, are nevertheless not content with the food prescribed for the monks by the Rule; that contrary to that Rule and the order's privilege, they demand meat and, if their demands are not complied with, have recourse to violence to enforce them. Moreover, while the alms they receive are sufficient, they procure more for themselves against the will of the religious, even in places which by custom or *de jure* are free from the obligation of supplying procurations.[86] For their horses and wagons they demand iron, though none is needed; their

[86] By procuration is understood the sustenance which was due to the bishop and his companions in the course of his canonical visitation of the churches of his diocese and which the churches visited had to provide.

cooks demand and extort money, and they do not observe the arrangements existing between the prelates and the monasteries concerning procurations. If they have the right to procurations on such a visit, they become oppressive and consume in one brief hour what would last the community a long time. Though they receive procurations, they have with them hunting dogs, falcons, and sparrow hawks,[87] and unless their demands in regard to these are met, they often break open the doors of the monasteries and churches and carry off the valuables of the church. Contrary to the laws, they receive several procurations in one day, sometimes also a specified sum of money,[88] though no visitation was held, and under cover of procurations they demand things to which they have no right, thus placing upon the monasteries and churches an intolerable burden. There are also others who impose upon the exempt and other religious the burden of furnishing the major portion of procurations due to nuncios of the Apostolic See and of meeting other extraordinary expenses, so that they themselves and the secular clergy need not supply them from their own resources. In many other ways do the aforesaid prelates oppress exempt monasteries and their churches in the matter of procurations and the imposition of unusual burdens. We, therefore, wishing to provide a suitable remedy for these evils, with the approval of the holy council, decree that when the bishops visit monasteries, not on occasion of a canonical visitation, but solely through a spirit of hospitality, they receive with gratitude the food that from a motive of charity is set before them. When, however, they come to monasteries from which they have a right to receive procurations, either by common law, custom, privilege, or by special indult, then they may, on days on which it is permitted, have meat, but in a house outside the wall of the monastery; if this is inconvenient, then in the monastery but outside the *porta regularis*, that is, outside the cloister (privileges to the contrary notwithstanding). Nor do we consider it unbecoming if the fragments that are collected from the tables of the bishops and their *familiares*, be given by the eleemosynaries of the bishops to the poor of the locality. From all other above mentioned oppressions the prelates shall diligently abstain, if they wish to escape the anger of God and of the Apostolic See.

CANON 21

Summary. The following is the big constitution *Exivi de paradiso*. It is an explanation of the Rule of St. Francis along stricter lines than those contained in the constitution *Exiit qui seminat* of Nicholas III (August 14, 1279) and was intended to put an end to the dissensions between the community and the Spirituals or reform party. Though in many points it was favorable to the latter, it failed nevertheless of its

[87] Cf. canon 4 of the Third Lateran Council.
[88] Cf. canon 24 of the Second Council of Lyons; also c.3, VI°, De cens., III, 20.

purpose. Owing to its length, abbreviations will be made in the following wherever possible.

Text. I have come out of paradise. I said: I will water my garden of plants, said the celestial husbandman who is the source of wisdom, the Word of God, begotten of the Father from eternity, remaining in the Father, in these latter days made flesh in the womb of a virgin through the action of the Holy Ghost, He went forth, a man, to accomplish the arduous work of the redemption by giving Himself to man as an exemplar of the heavenly life. But because man, harassed by the cares of this mortal life, turned his mind away from the consideration of this exemplar, the celestial husbandman, among other gardens in the Church militant, made one removed from the tempestuous waves of the world, in which man might devote himself more peacefully and securely to contemplating and practicing the works and precepts of the exemplar. This garden is the holy religion of the Friars Minor which, content with God alone, is firmly enclosed within the walls of regular observance. Coming into this garden, the beloved child of God gathers the myrrh and aromatic spices of mortifying penances, which by their wonderful fragrance diffuse the odor of sanctity over the whole world. This is that form and Rule of heavenly life which that illustrious confessor of Christ, St. Francis, drew up and taught by word and example to be observed by his children. But though his devout followers in former times have striven to observe that Rule faithfully in its purity and plenitude, they were nevertheless convinced that in a few points it was susceptible of more than one interpretation, for the elucidation of which they prudently had recourse to the Apostolic See that, the true meaning of such passages being established and all doubts dissipated, they might serve God in charity and with a peaceful conscience. Many of our predecessors, the Roman pontiffs, heeding their pious and just supplications, defined those points of the Rule, retaining some interpretations and rejecting others, according as they seemed suitable or unsuitable to the consciences of the brethren and to the state of regular observance. But because there are timorous souls that greatly fear any deviation from the way of God and sometimes find obstacles where there are none, the consciences of all the brethren have not been wholly quieted by the above mentioned elucidations, for in regard to some things pertaining to their Rule and state doubts still arise and agitate them, as we have often been told in public and in private consistories.

Wherefore, after having submitted the disputed points for examination to many prudent and discreet archbishops, bishops, masters of theology, and other learned men, we, having from our youthful days held the followers of that Rule and the whole order in the highest esteem, and now by reason of our pastoral office are the more

ardently encouraged to aid and favor them the more we consider the abundance of fruit that accrues to the universal Church from their exemplary lives and wholesome teaching, shall now, at the humble entreaty of the brethren, explain and decide those doubtful points that have been raised and may be raised in the future. As to the doubt whether the brethren are bound by their Rule to all the precepts and counsels of the Gospel, or whether they are bound only to the three counsels, namely, *vivere in obedientia, in castitate et sine proprio,* and to those things that are placed in the Rule *sub verbis obligatoriis,* we, following the footsteps of our predecessors, declare that, since a vow implies something definite and limited, it follows that he who by vow subscribes to a Rule cannot be said to be bound *ex vi voti hujusmodi* to those evangelical counsels that are not contained in the Rule. That this was the intention of St. Francis is evident from the fact that he embodied in the Rule some evangelical counsels and excluded others. Had he intended to bind them to all evangelical counsels, his inclusion in the Rule of some and his exclusion of others would be meaningless. But, since the nature of the restriction demands that everything foreign to it be excluded and everything related to it be included, we declare that the brethren by their acceptance of the Rule are bound not only to those three vows *nude et absolute accepta,* but they are bound also to the fulfilment of all those things that are related to or implied in those three vows. For, if they were bound only to the three vows, promising to observe the Rule *praecise et nude* by living in obedience, chastity, and poverty, and not bound also to all the things contained in the Rule and which in one way or another affect the vows, then the words, *promitto semper hanc regulam observare,* would be pronounced *pro nihilo et vane.* Nor must it be maintained that St. Francis intended that the followers of his Rule should be bound equally to all the things contained in it without distinguishing between those things that constitute *ex vi verbi* a mortal sin and those that do not, since he himself applies to some things the word precept or its equivalent, while in the case of others he makes use of different expressions.

Likewise, since in those things that concern the salvation of the soul the safer course is to be pursued, we declare that though the brethren are not bound to the observance of all things contained in the Rule *sub verbis imperativi modi* as they are bound to the observance of precepts or to the equivalents of precepts, it is to their benefit, in order to observe the purity and rigor of the Rule, to know that they are bound to the things indicated below *sicut ad aequipollentia praeceptis.* Wherefore, that these may be had in a brief form, we declare that what is said in the Rule about not having more tunics than one with a capuche and another without a capuche, about not wearing shoes, not riding on horses except in cases of necessity,

about wearing cheap clothes, about the obligation of fasting, that clerics say the divine office according to the order of the Holy Roman Church, that superiors be solicitous about the necessities of the sick and attentive regarding the clothing of the brethren, about the attention that the brethren owe a sick member of the community, about the brethren not preaching in a diocese when they have been forbidden to do so by the bishop, about no one attempting to preach unless he has been examined, approved, and appointed to this work by his superiors, about brethren who knowing that they cannot observe the Rule *specialiter* ought to have recourse to their superior; then, about what is said in the Rule regarding the form of the habit for the novices and the professed members, and lastly what pertains to the manner of reception and profession; all these things the brethren are bound to observe *tanquam obligatoria*. Furthermore, wherever the word *teneantur* occurs in the rule, this the order has traditionally regarded as having the force of precept and must be observed as such.

Again, since many of the brethren have doubts whether they are permitted to receive temporal goods from those entering the order if freely given, and whether they may without fault induce them to give such goods or any portion thereof to convents in case they should be asked to give advice in regard to such distribution, we, considering that St. Francis established his order in extreme poverty and wished that his followers should entertain no desire for the worldly goods of those entering the order, declare that in the future the brethren may not by any method seek to obtain such goods for themselves nor may they act as advisers in regard to its distribution. But, since the Rule leaves those entering the order free to dispose of their goods according as they are moved by God, it seems permissible to the brethren, considering their necessities, to receive something of such goods if those entering wish to give it *per modum eleemosynae*.

Though we have declared the provisions of the Rule regarding the number of habits and the quality of material to be used for them and other garments to be equivalent to a precept, yet this matter must in a large measure be left to the judgment of superiors and must also be dictated by the custom of each country or locality, since it is impossible to make a rule that would be applicable to all countries. To the judgment of superiors we leave also the matter under what circumstances the brethren may wear shoes. Outside of the fasts from the feast of All Saints to the Nativity of our Lord and Quadragesima the brethren are not bound to any fasts except those instituted by the Church. For it is not likely that the author of the Rule or he who approved it intended to absolve them from observing those fasts to which the other Christians are bound by the common law of the Church. In reference to the receipt of money either *per se vel*

per personam interpositam, the brethren must be cautious and not appeal to persons for money for other reasons and by other procedures than those indicated by our predecessor Nicholas III, lest they become transgressors of the precept and the Rule. For, where something that is not expressly granted is in a general way prohibited, it is understood to be prohibited. Wherefore, any acquisition of money and the reception of pecuniary offerings in the church or any other place, receptacles designed for pecuniary offerings, as well as any other method for obtaining money not granted by our predecessor, are absolutely forbidden. Since recourse or appeal to special friends is permitted by the Rule in two cases only, namely, to supply the needs of the infirm and the needs of the brethren in regard to clothing, and this, as our predecessor has pointed out, may be reasonably extended to other needs at times when alms are few or their bestowal should cease altogether, in no other cases are they permitted to appeal to such friends either directly or through intermediaries. Lastly, since the holy founder desired that the followers of his Rule be totally divested of all desire of and attachment to earthly things and that they be especially detached from money and completely cut off from the use of it, it is necessary that they be cautious, that while for the aforesaid reasons they may make appeals for money to meet their urgent needs, they should in all things so conduct themselves as one possessing nothing. Wherefore, to command when and in what manner money is to be spent, to demand an account of expenditures, to deposit it or cause it to be deposited in any manner, to place money in a coffer and to carry its key, these and similar acts we wish the brethren to know are illicit. Hence, when the holy man, giving expression in the Rule to the form of the aforesaid poverty, said: "the brethren shall make nothing their own, neither house nor land nor anything else, but as pilgrims and strangers wandering on earth and serving the Lord in poverty and humility, shall support themselves entirely by alms," this has been explained by our predecessor as applying to the individual religious and to the order as a whole; neither may possess anything; whatever is given to them in any way or form belongs not to them but to the Roman Church, and they have only the use of such things.

To our examination have been directed also things that are said to be done in the order and that are apparently at complete variance with the vow of poverty and the purity of the order, though the brethren as a body and especially the superiors maintain that such things, at least many of them, do not take place. The following especially call for a remedy: the brethren not only permit but actually cause themselves to be made heirs; they sometimes receive annual revenues in such large amounts that convents receiving them can subsist on them alone; when affairs of theirs, even in temporal matters, are conducted in courts, they assist the lawyers and agents and

are present personally to encourage them; they act as executors of wills and mix themselves in the disposition and restitution to be made in matters of usury; they have extensive gardens and vineyards from which they receive much produce and wine for the market; in times of harvest they gather such an abundance of grain and wine by begging and buying and store them away in granaries and cellars that they can live for the remainder of the year without asking for alms; their churches and other buildings exhibit such lavish expenditures that they appear more like the dwellings of the rich than those of poor friars; ecclesiastical vestments also in many places are of such quantity and quality that they outdo the great cathedrals. We reply to the foregoing as follows: since it is a truth of everyday life that what is outwardly done is but the expression of an interior disposition, it is necessary that the brethren who have freely and by vow stripped themselves of all temporal things, abstain from everything that is or appears to be contrary to that vow. Inheritance implies ownership, consequently in consideration of this vow they are incapable of inheritance, which of its very nature extends itself to money and *ad mobilia et immobilia*. Similarly, it is repugnant to the vow of poverty to receive the income of such inheritance or such part thereof that it can be presumed it was perpetrated in fraud. The same applies to annual revenues from whatever source they come. Furthermore, since not only that which is known to be evil but also everything that has the appearance of evil must be avoided *a viris perfectis*, it is but natural that the brethren should abstain from acting as assistants to lawyers and agents in court when the matter considered reverts or may revert to their temporal interest, for in such cases people are led to believe that they are seeking something that is their own, which is not only derogatory to their vow but also a source of scandal to their neighbor. Since they are forbidden not only to receive and own money but also the handling of it and may for nothing temporal engage in court action, they are forbidden also to act as executors of wills. However, their advice in such matters is not opposed to the statute, since in that case they exercise no jurisdiction. While it is lawful and consistent with reason that the brethren who devote themselves to prayer and study should have suitable gardens and fields for recollection, recreation, and the cultivation of the necessary vegetables for themselves, it is, however, contrary to their Rule to dispose of such products for a monetary consideration. As has been explained by our predecessor, even if lands, vineyards, etc., should be bequeathed to them to cultivate for their own use, they may not accept them, since their possession, considering the value of the produce, partakes of the nature of an income. Their holy founder wished that they, like the birds of the air, should have no granaries or cellars, but should rely on divine Providence for all things. Churches and other buildings

must not exceed in number and size the requirements of the community and in the future must be consistent with the vow of poverty. God, who knows all secrets, takes into account chiefly the intention, not the outward act, of those serving Him. He does not wish to be honored with things that are out of harmony with the condition and state of His servants. Superfluity and extreme costliness in the matter of ecclesiastical vessels and vestments partake of the nature of treasure and abundance, and are in the judgment of men manifestly inconsistent with the Rule and profession of the Friars Minor.

There has, moreover, sprung up among the brethren a troublesome question concerning the *usus pauper*, that is, whether by the profession of their Rule they are bound to the strict and simple use of things. Some there are who maintain that as *quoad dominium* they are bound by vow to an absolute non-proprietorship, so also *quoad usum* are they bound to a rigid and austere use of things. Others, on the other hand, maintain that by their profession they are not bound to any *usus pauper* that is not expressed in the Rule, though by the nature of their state they are bound *ad usum moderatum temperantiae, sicut et magis ex concedenti, quam ceteri Christiani*. Wishing to put an end to these conflicts, we declare that the Friars Minor are by the profession of their Rule in a special manner (*specialiter*) bound *ad arctos usus seu pauperes* which are contained in the Rule and bound *eo obligationis modo, sub quo continet seu ponit regula dictos usus*. But to say, as some are reported to have done, that it is heresy to hold that the simple use (*usus pauper*) is included or not included in the vow of evangelical poverty, we declare presumptuous and rash.

Finally, since the Rule specifies where the election of the minister general is to be held and who are the electors, but makes no mention of the election or institution of provincial ministers, we declare, decree, and ordain in this constitution, which we wish to be observed *in perpetuum*, that when any province is to be provided with a minister, the election of that minister is in the hands of the provincial chapter, which that chapter is bound to hold the day following its assembly; the confirmation of the election, however, pertains to the minister general. If the election is conducted *per formam scrutinii* and the votes are divided, it may happen that several ballots are necessary; the election of the one who has received the majority of capitular votes, notwithstanding the exceptions and opposition of the other party, is then referred to the minister general who, with the advice of discreet and experienced fathers of the order, confirms or rejects it according as he sees fit. If it is rejected, it is returned to the provincial chapter. But if the aforesaid chapter neglected on the day specified to elect a minister, then the duty to provide one falls upon the minister general. If for good reasons the minister general and the chapter should deem it expedient that in distant prov-

inces where hitherto for good reasons a different method of providing a provincial minister has prevailed, the latter be appointed by the minister general, this may be done, to the exclusion, however, of fraud and partiality.[89] (C.1 in Clem., De verb. signif., V, 11.)

We have thus far considered only those decrees which unquestionably emanated from the deliberations of the council. That, in addition to these, others were issued by the Pope with the approval of the council, though without expression of such approval, there has never been any doubt. The omission of such expression and the confused state of the *Clementines* have made it extremely difficult and in many cases impossible to determine with certainty what is what in regard to these decrees. The recent discovery of long lost material pertaining to the council's work of reform, has done much to clarify the situation and bring us a step or two nearer to the solution of the problem, though a great deal remains to be done and, until something of vastly greater importance than we have at present at our disposal comes our way, the exact number of decrees issued by the Pope with the concurrence of the council, must necessarily remain a matter of blind conjecture. As already stated, the most important contribution to the solution of the problem is that of the learned Franciscan, Dr. Ewald Müller.[90] With the aid of this new material and his fortunate discovery in the *Staatsbibliothek* in Munich of a MS that in its origin antedates the final redaction and publication of the *Clementines* by John XXII on October 25, 1317, he has thrown a flood of new light on some of the preceding twenty-one decrees, and has also unearthed eighteen others in the *Clementines*, some of which are without doubt conciliar, while others carry a greater or lesser degree of probability in this respect. The MS consists of less than two octavo pages and contains only brief notes, that is, the bare titles of the decrees. Its list is not complete, for it omits some of the twenty-one decrees we have just quoted, for instance, nos. 13, 14, 17, and 18, which, by the way, are mentioned by the papal master of ceremonies;[91] and vice versa, it includes in its list some that are not mentioned by the master of ceremonies; for instance, nos. 5, 6, and 16 of our series of twenty-one. To avoid complicated details and technicalities, I shall in the following list of eighteen decrees give briefly in each case the reasons that prompted Dr. Müller to include them in his list of fairly certain and probable conciliar enactments. Students desiring greater detail in the matter are advised to consult his work.

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[89] Ehrle, *Vorarbeiten z. Constitution "Exivi de paradiso," Archiv*, III, 41 ff.; Müller, pp. 310–52.
[90] *Das Konzil v. Vienne*, Münster, 1934.
[91] *Archiv f. Literatur- u. Kirchengesch. d. M-A.*, V, 580.

CANON 1

Summary. Directions concerning the use of papal rescripts by abbots and other religious prelates.

Text. Abbots and other religious holding major ecclesiastical offices may not, when it is question of priories and other houses subject to them, bring court action against anyone on the authority of Apostolic rescripts or letters of papal legates (except in such places and before such persons as is permitted to the priors and other officials of the priories and other houses; this observation applying also to places *ad mensas praelatorum pertinentes*). Whoever presumes to act in contravention of this and to annoy others, shall be condemned by the judge before whom the matter is brought, to pay the expenses and make good the damage to the other party. Any judicial process disregarding the aforesaid provision is *ipso jure* null. (C.1, in Clem., De rescript., I, 2.)

CANON 2

Summary. A rural official or a prior of a cloistered monastery may not be delegated in judicial matters.

Text. Though the city official of a bishop [92] or a religious obtaining the office of conventual prior (though that office is not customarily an elective one) may in judicial matters be delegated by the Apostolic See or by a papal legate, in the case, however, of a forane (rural) official [93] or of a prior of a cloistered monastery, we do not wish this to be observed. (C.2, in Clem., De rescript., I, 2.)

Comment. Neither of the two decrees just quoted contains a clue to conciliar origin. Nor is there reference to them in any document directly connected with or relating to the work of the council. Joannes Andreae,[94] in his comments on the word *de cetero* in the bull of transmission of John XXII,[95] says that Clement V after the council added to the list of conciliar decrees many other decrees which had no connection with the council, that is, those that he issued before and after the council. Among these, he says, are all the decrees under the title *De rescriptis* except the first two (that is, the two here in question). In his discussion of the first decree, commenting on the word *occasione*, he adds: *Iste versus non fuit de prima compilatione concilii.* Pierre Bertrandi,[96] cardinal and canonist, in refer-

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[92] *Principalis officialis episcopi,* known today as vicar-general.
[93] *Officialis foraneus,* vicar-forane, that is, rural dean.
[94] Giovanni d'Andrea (*c.* 1275–1348), a layman. He was a distinguished canonist and is regarded as the Father of the History of Canon Law. Cicognani, *Canon Law* (Philadelphia, 1934), p. 335.
[95] Friedberg, *Corpus Jur. Can.*, II, 1130.
[96] *Dict. de théol. catholique,* II, 796 f.

ence to the words *nisi ubi* of the first decree (the part in parentheses) says: *Hic usque ad verbum "Si quis" fuit post concilium Viennense additus per illos quibus istae constitutiones in melius reformandae commissae fuerunt. Unde per hoc dicas, ipsas ligare a tempore missionis domini Joannis papae, non a tempore primae publicationis.*[97] These words of the two canonists seem to establish beyond a doubt that the first of the above decrees is in its main portion conciliar, and though the evidence in favor of the second is not so convincing, its conciliar origin seems probable. The why and wherefore of the latter is not clear, unless it was based on complaints of bishops and abbots who were unwilling to have such or so much power given to the vicars-forane or to a prior of a cloistered monastery.

CANON 3

Summary. No religious is to be elected abbot or superior of an order other than that of which he himself is a member.

Text. **Since it is not in accordance with reason that men of different religious profession and habit dwell together in the same monastery, we forbid that in the future a religious be elected abbot or superior of an order other than that of which he himself is a member. Where this has taken place, the action is invalid. This provision, however, we do not wish to be an impediment to the election of a religious to the bishopric of a Church entrusted to the secular or any of the regular clergy. (C.1, in Clem., De elect., I, 3.)**

Comment. The only statement we have regarding the conciliar origin of this decree is that of Joannes Andreae, who, in his annotation to the word *de cetero* in the bull of transmission, says that all the decrees under the title *De electione* were added by Clement V after the council, except the first (that is, the one we are here considering), which had its origin in the council.[98] This statement, unsupported from any other source, leaves the point in question uncertain.

CANON 4

Summary. Local ordinaries are authorized to fill vacant benefices the disposition of which belongs to regular prelates, whenever these neglect to do so within the time prescribed.

Text. **Since prelates of religious orders sometimes neglect, within the time prescribed by the Lateran Council,[99] to fill vacant ecclesiastical benefices that pertain to their disposition, the right is hereby**

[97] Müller, pp. 624 f.
[98] "Multas constitutiones utiles addens, de quibus non fuerat in concilio tractatum, ut . . . de electione omnes post primam." Müller, pp. 574 f.
[99] Third Lateran Council, canon 8, which prescribed six months.

conferred upon local ordinaries who will meet such negligence by bestowing non-exempt benefices by their own authority, and those exempt by the authority of the Apostolic See, in such a way that those that have been customarily taken care of by the secular clergy be assigned to those clergy, and those that have been taken care of by the regulars be assigned to the regular clergy whose prelates have been negligent in this matter. By the same authority the ordinaries shall not permit prelates to apply or add such benefices to their table maintenance, or impose new taxes on them or increase old ones, and that the new ones imposed or the old ones increased be refunded. By the aforesaid benefices we mean those that are not *de mensa prelatorum,* but have their own priors or rectors, though these may at any time be freely recalled to the monastery should occasion so require. In connection with this matter we call attention to the observance of the constitution of Boniface VIII, prohibiting that the goods of vacant benefices be appropriated by the prelates or others,[100] and likewise that other constitution of Boniface VIII forbidding any religious to have several benefices with the *cura animarum* annexed, even though that *cura* is not exercised by himself but by another and is furthermore receiving proper attention.[101] (C. un., in Clem., De suppl. neglig. praelat., I, 5.)

Comment. Joannes Andreae included this decree in his enumeration of the conciliar decrees that were directed against exempt religious. A stronger argument in favor of its conciliar origin exists in the close textual relationship between the present decree and the complaints of William Duranti the Younger.[102] Duranti complained that exempt prelates often use the churches of which they possess the right of presentation to their own personal advantage, burdening them with taxes and pensions and thus altering their financial status. These complaints have been taken verbatim into this decree.[103]

CANON 5

Summary. Anyone not a subdeacon has no voice in the chapters of cathedral and secular collegiate churches. He who has a benefice to which is annexed a sacred order, must within a year be promoted to that order or lose his voice in the chapter and also half of his allowance.

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100 C.9, VI°, De off. ord., I, 16.

101 C.32, VI°, De praeb., III, 4.

102 He was bishop of Mende, Languedoc, and a nephew of the famous canonist and ritualist of the same name, with whom he is often confused. He was present at the council. By order of Clement V he wrote: *Tractatus de modo concilii generalis celebrandi et de corruptelis in ecclesia reformandis.* It consists of three books and deals with the canonical process of convoking and conducting general councils, together with attacks on the corruptions and abuses prevalent among ecclesiastics at that time.

103 Müller, p. 539.

Text. That those who hold or in the future will hold offices in cathedral and secular collegiate churches may the more promptly receive the corresponding sacred orders, we decree that no one in the future shall in these churches have a voice in the chapters (even though this be freely granted him by the others), unless he has received at least the subdiaconate. If those, however, who now hold or in the future will obtain *dignitates, personatus, officia vel praebendas* to which certain orders are annexed, do not within a year from the time of their appointment, unless a just impediment excuses them, receive the corresponding order, they shall have no voice in the chapter and shall, moreover, receive only half of the allowance allotted to those who are present at certain hours of the divine office, till they have been promoted to such orders; customs and statutes to the contrary notwithstanding. All penalties decreed by law against those who refuse to be promoted to orders, shall remain in force. (C.2, in Clem., De aetat. et qualit. praefic., I, 6.)

Comment. There can be no question about the conciliar origin of this decree. First of all, we have the testimony of the papal master of ceremonies, who in his report regarding the third session says, that a decree was read to the effect that those who are not subdeacons have no voice in the chapter.[104] Then, no less explicit and positive is the statement of the Munich MS,[105] a comparison of which with the contents of the present decree leaves no doubt that its reference is to the Clementine decree here under consideration. From the testimony of these two contemporary witnesses, we are forced to conclude that we have here a genuine conciliar decree.[106]

CANON 6

Summary. A shorter course of procedure in cases of benefices, tithes, matrimony, usury, and other matters related to these, is decreed.

Text. Desiring to restrict the harmful prolongation of disputes in the cases mentioned below, which experience teaches arise from an over-scrupulous observance of the rules pertaining to the judicial order, we decree that in the future a shorter course of procedure (*simpliciter et de plano, ac sine strepitu judicii et figura*) be adopted in elections, postulations, and provisions; also in the matter of *dignitates, personatus,* canonicates, prebends, and all other ecclesiastical benefices; of tithes, even when, after an admonition, recourse is had to ecclesiastical censure to compel payment; lastly, in the matter of matrimony and usury and all other matters in any

[104] *Archiv,* V, 580.
[105] Müller, p. 687, nos. 18 and 19.
[106] *Id.,* p. 620.

way related to these. The foregoing provisions we wish to be applied not only to future cases but also to current ones, and to matters connected with the procedure of appeals. (C.2, in Clem., De judiciis, II, 1.)

Comment. If not in its form, certainly in its chief contents this decree has a conciliar decision for its basis. This is indicated by the declaration of the papal master of ceremonies that in the third session of the council a decree was read prescribing a shorter and summary procedure in the matter of ecclesiastical benefices.[107] This is confirmed by the Munich MS.[108] Contemporary sources, moreover, furnish us with many complaints regarding the long drawn out ecclesiastical judicial procedures and call for a simplification of such processes. Duranti speaks of a certain immortality of such procedures in the Roman curia.[109]

CANON 7

Summary. Bishops who have been driven from their sees, may, under certain conditions, from the neighboring dioceses in which they are temporarily located, legally proceed against their persecutors and also exercise jurisdiction over their subjects.

Text. **Though it is generally forbidden by the ecclesiastical canons that a bishop exercise jurisdiction in a diocese other than his own, we nevertheless grant to the bishops who, having been expelled from their sees by the impudence of the ungodly, do not dare on account of the fear of consequences reside in their cities or dioceses or any part thereof, or exercise their jurisdiction therein *per se vel per alium,* that the wrongs done to their Churches may not thus remain unpunished, permission, from other dioceses or from prominent cities or localities near their Churches, in which they can reside securely and exercise freely their jurisdiction, to proceed legally, as justice may dictate, against their persecutors and their counselors and abetters, provided a legal citation has preceded. If, however, by reason of fear the bishops will not risk citing their persecutors in the aforesaid manner, or if these maliciously adopt means to frustrate such citation, then they may on Sundays and festivals during the public services in the churches of the neighboring diocese cite them or have them cited, so that in this manner the accused may learn of the citation. If within a reasonable period of time they do not appear before the bishops, procedure against them may nevertheless be legally begun. We moreover grant to these bishops au-**

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[107] "Fuerunt lecte etiam alie constitutiones . . . quod in causis ecclesiasticis, scilicet in episcopalibus, personatibus et ceteris beneficiis summarie, sine strepitu et figura judicii procedatur." *Archiv,* V, 580.

[108] Müller, p. 687, no. 17.

[109] *Id.,* pp. 626f.

thority to exercise from the dioceses in which they are temporarily located (in case they cannot do it *per se vel per alium* in their own dioceses) their full jurisdiction over their own subjects, so, however, that these subjects, excepting the persecutors, their counselors, and abetters, may not be cited to a place that is distant more than a two days' journey from the boundary of their diocese. In all these matters the bishops must seek the permission of the *ordinarius loci* in whose diocese they happen to reside. In case it is not granted, they may in spite of such refusal proceed as was indicated above. If the aforesaid bishops should say that they did not dare personally cite the persecutors and their abetters to their houses or publicly to the cathedral, or that the persecutors and their abetters maliciously interposed an obstacle so that they could not be thus cited, or brought about that they (the bishops) could not or dared not exercise jurisdiction against them in their dioceses either *per se vel per alium*, we wish them to be honest in their statements, strictly commanding them under threat of the divine judgment that they do not in regard to the preceding matters state anything that is false and deceitful.[110] The processes conducted and the sentences imposed by the bishops in the dioceses in which they temporarily reside, they must make known to the bishops of those dioceses should they request them. In none of the aforesaid matters either at any time or in any manner, shall the jurisdiction of the local ordinaries or of anyone else having jurisdiction in the dioceses in which the aforesaid expelled bishops reside, be endangered or curtailed. (C. un., in Clem., De foro competenti, II, 2.)

Comment. The only direct reference to this decree as being of conciliar origin is found in the annotations of Joannes Andreae to its first word *Quamvis*, in which he declares that it was published in the council in response to the request of a number of bishops present, chiefly Italians, as the Archbishop of Milan, the Bishop of Vicenza, and others, who had been driven from their sees.[111] This statement is supported by the fragment of the acts discovered by the late Cardinal Ehrle, which contains a complaint of the ecclesiastical province of Milan to the effect that powerful laymen exercising tyrannic rule, capture, drive from their sees, and prevent the return of, bishops who battle for the freedom of the Church. These laymen do not shrink from murder. They forbid episcopal officials to

[110] That is, the permission granted in the first part of the decree holds good only if their statements are true regarding their inability to cite their persecutors to their houses or to their cathedrals, and the latter's interposition of obstacles to frustrate citation, and further, if their statements regarding their inability to exercise *per se vel per alium* their jurisdiction in their own dioceses are also true.

[111] "Et quia in Viennensi concilio plures erant episcopi a suis sedibus expulsi et maxime italici, ut Mediolanensis et Vecen(tinus) et aliqui alii illis instantibus fuit hec constitutio promulgata."

perform their duties and they rob the Church of its rights and possessions.[112] A comparison of the Latin text of this complaint with that of the first part of the Clementine decree reveals not only an identity of thoughts but also their expression in similar and identical words. Among the *Regesta* of Clement V is a bull from which we learn that the Archbishop of Milan and the Bishop of Vicenza, as well as other bishops, had received from the Pope during the council *conservatores*, who were to defend the interests of the bishops in the dioceses from which they had been expelled and to be of assistance to them in the dioceses in which they temporarily resided.

From the foregoing we may safely conclude that a decree of the above nature was drawn up by the council, but whether we have it in the above form is impossible to say; it seems very doubtful. What we have may be just a part of a large and general decree, or it may be one of those unfinished decrees that was completed after the council; in either case it would be easy to understand the omission of the formula: *sacro approbante concilio*.[113]

CANON 8

Summary. Jews and Saracens may not be granted privileges whereby to escape conviction by Christians of misdemeanors.

Text. Since some Jews and Saracens, as we have learned, to escape conviction by Christians of civil and criminal misdemeanors, protect themselves by privileges obtained from kings and princes, which is not only contrary to law but also at variance with and a disgrace to the Christian religion, we exhort kings and princes to grant no more such privileges in the future nor permit those already granted to be made use of. Should the Jews and Saracens, however, presume to make further use of such privileges, then the Christians shall be compelled, if need be by ecclesiastical censure, to abstain from all intercourse with them. (C. 1, in Clem., De testibus, II, 8.)

Comment. There is little ground on which to establish this decree as a conciliar one. As a matter of fact, the only ground we have is a possible connection between it and a complaint of the diocese of Toulon. This complaint is to the effect that whenever a rector of a church causes cer-

[112] "Provincia Mediolanensis dicit, quod layci tiranizantes et dominantes civitates seu terras ceterisque layci per se et per alios pontifices pro libertate ecclesiastica pugnantes capere et de suis sedibus expellere ac metu sive dolo facere, quod in ipsis morari non possint, ac etiam interficere non formidant, et eorum officiales suum non permittunt officium exercere, et ecclesiarum castra, bona et jura occupare et invadere minus licite procurant." *Archiv*, IV, 377.

[113] Müller, pp. 479-81.

tain persons, especially Jews, to be cited on the authority of the papal letter, *Ea que de bonis*, or of another papal document, the royal officials immediately imprison the friends and relatives of the rector, till those who procured the citation repudiate the right which they have and repudiate also the papal letter.[114] If the decree has any relation with that complaint, it may be accepted at least as substantially conciliar.[115]

CANON 9

Summary. Bishops shall punish clerics engaged in the butcher's trade and in the conduct of taverns, who after the third admonition do not abandon such pursuits. Other clerics also who are engaged in any business inconsistent with the clerical state, shall be canonically proceeded against.

Text. We strictly command local ordinaries to warn by name three times those clerics who publicly and personally engage in the butcher's trade or who conduct taverns, that they abandon such pursuits within a period of time to be specified by the ordinaries, and not to resume them in the future. Those who after such warning do not discontinue such practices or at any time resume them, if they be married, shall lose _eo ipso_ all clerical privileges; if unmarried, lose their privileges in so far as these are of a real or tangible nature (_in rebus_), and if in addition they wear the garb of laymen, lose _eo ipso_ also their personal rights as clerics so long as they are engaged in the aforesaid pursuits. In regard to other clerics who are engaged in secular commercial activities or in any business inconsistent with the clerical state, and those also who carry arms, the ordinaries shall so strive to observe the canonical statutes that the aforesaid clerics be restrained from such excesses and they themselves be not guilty of reprehensible negligence in these matters. (C. 1, in Clem., De vita et honest. cler., III, 1.)

Comment. The *clerici conjugati* were not anything new in the time of Clement V. Earlier legislation concerning them may be found in the Decretals of Gregory IX.[116] Unlike our own times, when, strictly speaking, there are no clerics below the major orders except those who have received tonsure and minor orders in preparation for the priesthood, in the medieval Church many young men, if not most of them, enrolled themselves in the

[114] "Diocesis Tolonensis dicens, quod si rector alicujus ecclesiae faciat per litteram *Ea, que de bonis*, vel aliam papalem aliquas personas, precipue Judeos, citari; officiales regii statim amicos et propinquos dicti rectoris incarcerant, donec illi, qui impetraverint, renunciaverint littere papali et juri et judicii competenti." *Archiv*, IV, 395.

[115] Müller, pp. 640 f. On the relation between the Church and the Jews, cf. Eubel, "Die Päpste und die Juden," in *Röm. Quartalschrift*, XIII (1899), 29–42, and Grayzel, *The Church and the Jews in the Thirteenth Century* (Philadelphia, 1933), where an abundant literature is given (pp. 359–64).

[116] Cc. 1–10, X, De cleric. conjug., III, 3.

ranks of the clergy by receiving the tonsure in the hope of obtaining a benefice or ecclesiastical employment of some kind. They were, together with those who had received minor orders, permitted to marry. Those who contracted only one marriage and that with a virgin, enjoyed the clerical privileges, provided they wore the clerical garb and the tonsure.[117] However, many of these people had no intention of adjusting their life and conduct to the requirements of the clerical state. Some continued in pursuits inconsistent with that state; and others had the tonsure conferred on themselves for no other purpose than to secure protection under the cloak of clerical privileges so as to escape punishment by the civil power for crimes that they had committed. Hence James II of Aragon instructed his representatives on the eve of their departure to the council, to acquaint the Pope with the situation and to petition him that such married clerics, through whose misconduct so much scandal is caused, be, notwithstanding their tonsure, removed from the protection of the ecclesiastical and subjected to the civil power or jurisdiction. Replying later through Cardinal Béziers, the Pope informed them that he had placed their petition in the hands of Cardinal Colonna, who would bring it before the council, where, he assured them, it would receive the fullest consideration.[118] There can be no doubt, then, that the matter was brought before the council. The ecclesiastical province of Sens lodged a complaint with the council, to the effect that though it is an ancient custom that *clerici conjugati* who have contracted only one marriage and that with a virgin, be in civil and criminal cases brought before the ecclesiastical tribunals, secular judges, nevertheless, seek to bring them before their own tribunals and are unwilling to surrender them to the ecclesiastical judges.[119] Duranti suggested the revocation of the decree of Boniface VIII, because those married clerics are a disgrace to the clerical state. In several synodal decrees before and after the council we find the same complaints, with an admonition to the secular judges to observe the decree of Boniface VIII concerning the rights of the *clerici conjugati*.[120]

In what has been said, there is question only of married clerics, and one conclusion seems to stand out clearly, namely, that the council, standing between a general disinclination to remove from the protection of ecclesiastical jurisdiction those *clerici conjugati* who abuse the tonsure, and the

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[117] Cf. the decree of Boniface VIII, C. 1, VI°, De cleric. conjug., III, 2.

[118] Finke, *Papsttum u. Untergang d. Templerordens*, II, 232, 279.

[119] "Provincia Senonensis dicit, quod licet clerici conjugati cum unica et virgine de consuetudine antiquissima ad forum ecclesiasticum in civilibus et criminalibus in solidum pertineant, judices seculares ipsos justitiare nituntur nec judicibus ecclesiasticis reddere volunt." *Archiv*, IV, 378.

[120] Synods of Anse (1300), canon 21, and Palencia (1388), canon 3, Mansi, XXIV, 1230; XXVI, 741; Hefele-Leclercq, VI, 462, 1428.

request of James II of Aragon for their outright subjection to the civil jurisdiction, adopted a *via media* by declaring that those *clerici conjugati* who do not amend after the third admonition, lose *eo ipso* all clerical privileges, thereby becoming subject to the civil jurisdiction. This portion of the decree certainly has much in its favor of being conciliar. Whether the remainder has any connection with the council, is impossible to say. It is difficult to understand, however, why the council should limit its action to the married clerics to the exclusion of the unmarried ones, among whom no doubt were similar offenders.[121]

CANON 10

Summary. A cleric who, having a benefice, publicly wears unbecoming garments, loses for six months the usufruct of that benefice; if he has no benefice, he becomes for the same length of time disqualified from obtaining one. The same applies to regular and secular priests with and without benefices.

Text. Since he who lays aside the garb proper to his order and without good reason adopts and publicly wears another, shows himself to be unworthy of the privileges of his state, we ordain in the present constitution that any cleric who, possessing a benefice, publicly and without reasonable cause, wears strange and variegated garments, is *eo ipso* suspended for a period of six months from the usufruct of his benefice. If he does not possess a benefice, but is constituted in sacred orders below the priesthood, he becomes for the same length of time *eo ipso* disqualified from obtaining a benefice. The same penalty applies to those clerics who, having the tonsure, wear such clothes in public. He who has a *dignitas* or *personatus* or other benefice to which is annexed the *cura animarum*, as also all other priests and religious, who in their whole exterior deportment ought to be an example of interior virtue, if without reasonable cause they publicly wear clothes of this kind, or appear in public wearing woolen or linen variegated headcover, they are *eo ipso* suspended for one year from the usufruct of their benefices in case they have such, otherwise they, and the religious also, are for the same length of time disqualified from holding an ecclesiastical benefice of any description. These and all other clerics who wear an expensive outer garment so short that the garment beneath it is exposed, whether secular clerics or religious, if they have the *cura animarum*, are bound to give within a month that outer garment to the poor. Religious, however, who have not the *cura animarum*, are bound within the same period of time to turn it over to their superiors and it is to be applied to charitable purposes, otherwise those having benefices incur *ipso facto* the aforesaid penalty of suspension and the others the aforesaid disqualification. We furthermore forbid clerics, espe-

[121] Müller, pp. 614 f.

cially those having benefices, to wear publicly red or green shoes. (C. 2, in Clem., De vita et honest. cler., III, 1.)

Comment. There is not much to show that this is a conciliar decree. We have two references to the matter with which it deals. Duranti declares that clerics who disregard the admonition of their bishop in the matter of dress, ought to be deprived of their benefices, while Raymond Lully, speaking of the same subject, simply says that the clerical dress should be of one color conforming to the clerical state. We may take it as certain that both of these statements antedate the council, otherwise reference to it would have been made. Urged on by these and similar complaints that have come down to us, it is probable that the council issued a decree, but whether we have it in the above form, seems very doubtful.[122]

CANON 11

Summary. Religious who burden or defraud churches of tithes due to them, if they do not within two months make full restitution, are suspended from all offices and benefices till a just settlement has been made; if they do not hold offices or benefices, then in place of suspension they incur excommunication.

Text. **Religious who presume to appropriate or by fraud or under any colored title usurp tithes of newly broken land or other tithes belonging to churches, to which they have no legal claim; or who do not permit or prohibit that a tithe be paid to the churches on animals that belong to their *familiares* and shepherds and others whose animals intermingle with their own flocks; or who defraud the churches by buying animals in many places and then leave them in the care of those from whom they bought them or in care of others; or who refuse to pay or hinder the payment of tithes on lands the cultivation of which they entrust to others, if after a just demand on the part of those whom it concerns, they do not within a month desist from such practices, or if they do not within two months make full restitution to the churches thus defrauded, are suspended from all offices and benefices till a just settlement has been made. If these religious hold no offices or benefices, then in place of suspension they incur excommunication from which they can be absolved only after they have made full satisfaction, privileges to the contrary notwithstanding. The foregoing, however, we do not wish to be extended to animals that are held by the donors (benefactors), in case these have given themselves and their effects to the religious. (C. 1, in Clem., De decimis, III, 8.)**

Comment. There can be no doubt that this decree is conciliar in content though not in form. It has the earmarks of a decree that was left unfinished

[122] *Ibid.*, p. 616.

by the council and completed later either by the commission appointed for this work or by the Pope himself. Evidently it is based on a complaint handed in by the ecclesiastical province of Sens, a clause of which was taken *verbatim* into the decree.[123]

CANON 12

Summary. The decree gives detailed directions governing the entire exterior and interior life of the Benedictine monks.

Text. That nothing unbecoming may find its way into the order of the black monks and nothing dishonorable develop side by side with the good, but rather that the flowers of worth and esteem may produce fruit in abundance, we decree as follows:

(1) The upper garment next to the habit may be of black, brown, or white color, according to the custom of the locality in which they reside. The quality of the material must be in keeping with monastic moderation. Not what is expensive and fine must be used, but what is practical. Moreover, the garment must be round and closed, not too long or too short, having large sleeves extending to the hands, not sewed together or in any way buttoned. Let them be content with a headcover of black material or of fur in place of the capuche with the capuche of the habit which they have been wearing, or according to the disposition of the abbot they may also wear shoulder capes of modest design.[124] In the garment they may not wear silk in place of fur. They may use large and high boots in place of shoes. They shall not presume to wear ornate belts, knives, and spurs, or highly decorated saddles and other superfluous and expensive riding accouterments. Where there is a community of twelve monks or more, the abbot, prior, or the one in charge may wear within the walls of the monastery a habit with long and full sleeves of material customarily used in that monastery. The other monks in monasteries in which it is customary to wear a habit with long sleeves, may use them also. In other monasteries, however, in houses and priories that have not the above number of monks, they may wear a long habit without sleeves. Outside the monastery, abbots, priors, or those in charge, and other monks may have a habit without sleeves or one with long and full sleeves or a mantle, and underneath the mantle they may wear the habit without sleeves, or, if they prefer, the scapular. The mantle must be closed. At the divine office, in donning the sacred vestments and also when engaged in

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[123] *Ibid.*, p. 540. This decree was renewed by the Synod of Valladolid (1322) in canon 11. Mansi, XXV, 707.

[124] The text reads as follows: Almutiis de panno nigro vel pellibus caputiorum loco cum caputiis habitus, quem gestaverint, sint contenti, juxta tamen dispositionem abbatis scissis super humeros et honestis caputiis uti possint.

manual labor, they may wear the scapular. But lest, from different acceptations which the words *flocus* and *cuculla* are said to have in different localities, doubts may arise, we here declare that by *cuculla* is understood a long and full habit without sleeves, and by *flocus* a habit with long and full sleeves.

(2) All monks, whether in the monastery or outside, must go to confession at least once a month, and on the first Sunday of each month all must receive communion in the monastery; any ground for doubt as to whether one should receive or abstain must be made known to the abbot or prior or to a confessor in the monastery, by whose decision such a one shall abide. The Rule, when it is read in the chapter, is, for the sake of the younger members, to be explained by him who presides or by the one appointed by him. A competent instructor shall be assigned to instruct the novices in the divine offices as well as in regular observance.

(3) Hunting and fowling as well as the keeping either *per se* or *per alios* of dogs and birds for such purposes, are forbidden, nor may they permit their friends (*familiares*) temporarily residing in the monastery to keep such dogs and birds, unless the monastery possesses a forest or an animal park or has the right to hunt on property belonging to others, in which case they are permitted to keep dogs and birds, provided they do not keep them in the monastery or in the houses in which they live or within the cloister, and the monks themselves do not personally take part in the hunt.

(4) Whoever acts in contravention of the foregoing provisions regarding the matter of wearing apparel, shall be subject to the regular discipline of the monastery. If he be an abbot or a prior having no abbot, he is *ipso facto* suspended for one year from the collation of benefices; if anyone else, he shall for one year be suspended from exercising his administrative office if he has one. In case he has none, he is *ipso facto* disqualified from obtaining one and disqualified also from holding an ecclesiastical benefice. Those who deliberately transgress the prohibition against hunting and the keeping of dogs and birds, incur *ipso facto* for a period of two years the penalties of suspension and disqualification according to the aforesaid distinction of persons. In case the abbot or prior incurs the penalty of suspension from the collation of benefices (as was said above), such collation devolves with the counsel and consent of the community or the greater part thereof on the *prior claustralis*.[125]

(5) Some monks, as we understand, having grown weary of the sweet yoke of regular observance, have left their monasteries, feel-

[125] The *prior claustralis* is the prior in an abbey. He holds the first place after the abbot, whom he assists in the government of the monastery and whose place he supplies in his absence. The *prior conventualis* is the superior of a smaller and independent monastery that has not yet attained the rank of an abbey.

ing that they could not safely remain therein, and at times left also from motives that were not honest. These sometimes roam about the courts of secular princes and, unless their plea for money and aid is heeded by their superiors, conspire against them, betray them, cause them to be captured and imprisoned and their monasteries to be burned, and at times also presume with the aid of the princes to seize the possessions of the monasteries either wholly or in part. Therefore, wishing to put an end to their boldness in this matter, we by this decree forbid monks and canons regular to betake themselves to the courts of princes without special permission of their superiors. If, however, they act in violation of this provision for no other purpose than to inflict injury on their superiors or on the monasteries, we wish that they incur *ipso facto* the sentence of excommunication, and we urge upon their superiors to compel them to remain away from the aforesaid courts and to punish severely those who refuse obedience. The same sentence we decree is to be incurred by those who without the permission of the abbot carry arms within the walls of the monastery.

(6) Following in the footsteps of our predecessors, we strictly forbid individual monks to live alone in priories and places of which they have charge. If the revenues of such places are not sufficient to maintain two, then, unless the abbots provide for such sufficiency, let the local ordinaries in agreement with the abbots unite such priories to others in the vicinity belonging to the monasteries, or to the monasteries themselves, or unite several such places in one, whatever way is more convenient and practical. The monks of those places that have been united to other priories are to be recalled to their monasteries, and, for the maintenance of the clergy who are to serve the united priories, due provision is to be made from the revenues of such places.

(7) Conventual priories cannot be conferred on anyone who has not attained the age of twenty-five years, and non-conventual ones having the *cura animarum* annexed, though exercised by secular clergy, cannot be conferred on anyone unless he has attained the age of twenty years. In each case the incumbents of the priories must within a year from the time of collation or occupancy, or within the twenty-fifth year of age, if before that year they have held non-conventuals priories, have themselves raised to the priesthood. If without reasonable cause this is neglected, they are *eo ipso*, even without previous warning, deprived of the priories, which may *ea vice* not be conferred on them again. Such priories, moreover, must not be conferred on anyone except those who have expressly made profession in an *ordo monachalis*. Those who have been appointed to priories or houses outside the monasteries are not permitted to live in the monasteries, but must dwell in the places which they have

charge of (custom to the contrary notwithstanding), unless they are excused for a time from such residence *ex studiorum causa* or for some other good reason.

(8) For the increase of divine worship, we decree that every monk, on being so commanded by his abbot, provided no legitimate obstacle exists, must have himself raised to all the sacred orders. Moreover, that there may not be wanting to the monks an opportunity to acquire knowledge, let there be in every monastery that has sufficient means a competent master who may instruct them in the sciences.[126]

(9) All the foregoing and also those things which our predecessor, Innocent III [127] of happy memory, has decreed in regard to a more fervent cultivation of regular observance in the matter of clothing, poverty, silence, food, the triennial chapter, etc., all of which we approve and renew, we wish and decree to be strictly observed. (C. 1, in Clem., De statu monach., III, 10.)

Comment. The decree aimed at a reform of Benedictine monastic life. Attempts to accomplish such a reform had occupied the Church authorities during the entire thirteenth century. Though it does not contain the formula of conciliar approval, there can be no doubt that its main provisions are based on conciliar material, furnished chiefly by Le Maire and Duranti, bishops of Angers and Mende respectively.[128] In compliance with the Pope's request, both had brought to the council written suggestions or recommendations on points of discipline that needed reform, in which they were very outspoken in their condemnation of certain abuses existing in the order. They urged that immediate steps be taken to bring about a reform of the monks. A number of their recommendations we find embodied in the decree. Moreover, considering that the council issued a decree for the reform of the female branch of the order,[129] we have good ground to surmise that it busied itself also with the reform of the male branch, on which the monasteries of nuns were dependent. The Synod of Rouen (1335), held eighteen years after the publication of the *Clementines* by John XXII, in canon 3 renewed the present decree and ascribed it to the

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[126] The Synod of Macon (1286) in canon 1 decreed that no one may be the incumbent of several priories and no one may be appointed prior who has not attained the age of eighteen years. As soon as the prior has reached the required age he must have himself raised to the priesthood, and the customary number of monks in a monastery or priory may not be reduced without the consent of the bishop. The younger members of the community must be instructed in the monastery and not sent to outside schools. Mansi, XXIV, 612; Hefele-Leclercq, VI, 300.

[127] C.7, X, De statu monach., III, 35. Cf. canon 12 of the Fourth Lateran Council. Berlière, "Innocent III et la réorganisation des monasteres Bénédictins," in *Revue Bénédictine*, XXXII (1920), 22 ff. and XXXIII (1921), 145 ff.

[128] Müller, pp. 496–502.

[129] Cf. canon 4 of the preceding series of this council.

Council of Vienne,[130] while the Synod of Valladolid (1322) speaks merely of a *constitutio Clementis Vti*.[131]

CANON 13

Summary. Religious are bound to meet the obligations of churches and convents that they have under any title obtained, unless excused by Apostolic privilege, exemption, or otherwise.

Text. Since it is in accordance with nature that those who enjoy advantages should also bear the burdens connected with them, we decree that religious who have under any title obtained churches and convents, strive to pay promptly to the papal legates the procurations due to them from these churches and convents, and also fulfil their duties toward the bishops in matters that pertain to their rights, for all these obligations rested upon the churches and convents before the religious received them, and by passing into their hands the obligations were not canceled but naturally passed with them, unless the religious can by Apostolic privilege, exemption, or other legitimate reason excuse themselves. Such privileges and exemptions, however, we do not wish to be extended to future acquisitions of churches and convents. (C. 1, in Clem., De cens., III, 13.)

Comment. There is absolutely nothing to indicate that this is a conciliar decree. A study of the interesting and learned discussion of Dr. Müller leaves no doubt that to all appearances we have here nothing more than the gaunt and almost unrecognizable remnant of a genuine conciliar decree, which after the dissolution of the council underwent radical transformations. The Munich MS ascribes to the council the following decision: *Item quocienscumque archiepiscopus visitaverit provinciam suam vel pertransierit in locis exemptis et non exemptis, procuracionem recipiet ex concilio eidem indulto. Hoc ipsum et episcopo in sua dyocesi est concessum.*[132] That is, in virtue of this conciliar concession the archbishop has the right to procurations in the course of his visitation of his province and also in his passage through exempt territory. The same right is extended to the bishop in the visitation of his diocese. So far as the exempt were concerned, the decision was a radical departure from the traditional discipline, and signified an important victory of the bishops over the privileges of exempt religious, who put up then, as they had done before in the Second Council

[130] Mansi, XXV, 1041; Hefele-Leclercq, VI, 836.

[131] Mansi, XXV, 7071; Müller, pp. 569-73. The fact that a provincial or diocesan synod ascribes a decree to the Council of Vienne is no guarantee that the decree is conciliar, unless it contains the formula *sacro approbante concilio*, for in this matter the synods merely followed the superscription of the decrees which in the *Clementines* is untrustworthy.

[132] Müller, p. 687, no. 20.

of Lyons, a united front against the curtailment of their privileges, especially the privilege which exempted them from furnishing procurations. If the above decree given by the Munich MS was really a conciliar decision, the why and wherefore of its transformation may be briefly stated thus: realizing that it would be a source of hardship and grave inconvenience to religious communities, the Pope, after the dissolution of the council, modified or rather replaced it by the present decree, in which he substituted papal legates for archbishops and bishops and limited procurations to those churches and convents upon which such obligations rested before they came into the hands of the religious, unless the latter could show legitimate ground for exemption. This limitation, however, as well as the provision that the privilege is not to be extended to future acquisitions meant practically a confirmation of exemption from furnishing procurations. The archbishop retained only the honor or right accorded him by the decree *Archiepiscopo*,[133] and even the last portion of this decree, forbidding him and the bishop to exercise jurisdiction in exempt territories or in any way to restrict the privileges of exemption, has the appearance of a post-conciliar addition.[134]

CANON 14

Summary. Ordinaries, when the matter becomes known to them, shall publish the sentences of excommunication and interdict incurred by those who extort taxes from clerics while traveling.

Text. By the present constitution we decree that the local ordinaries, when the matter becomes known to them, publish or have published by their subjects the sentences of excommunication and interdict incurred _a jure_ by those who either on their own initiative or at the behest of another demand or extort from ecclesiastical persons while on a journey a tax or impost on goods that they carry with them or have carried by others, goods that are their own and will not be made the object of barter or sale, doing this to the danger of their own soul and to the disadvantage and loss of those from whom such tax is demanded; and they shall continue to publish such sentences of excommunication and interdict till restitution and suitable satisfaction have been made. (C. 3, in Clem., De cens., III., 13.)

Comment. Based on the complaints and remedial suggestions contained in Ehrle's fragment of the acts,[135] this is evidently a renewal of the decree *Quamquam* of Boniface VIII.[136] But before that the Synod of Bourges

133 Cf. canon 16 of the preceding series.
134 Müller, pp. 558 f.
135 *Archiv*, IV, 410.
136 C.4, VI°, De cens., III, 20.

(1276) had in canon 10 decreed *ipso facto* excommunication for those who persisted in the practice.[137]

CANON 15

Summary. The decree enumerates thirty complaints of religious against episcopal oppression, and commands bishops and other prelates to abstain absolutely from giving further cause for complaints and to respect the rights and privileges of religious.

Text. Complaints come to us frequently from religious that many bishops and their superiors, as well as other ecclesiastical prelates, in many ways and unjustly disturb their peace. Some seize and incarcerate exempt religious in cases not legally permitted. Others by threats of severe penalties hinder laymen from paying to religious the tithes and revenues due them; they even go so far as to forbid them to attend their masses. Those who work in their mills and cook their food, their vassals and domestics, in short, all who in any way have relation with them, they arbitrarily and without reasonable cause suspend, penalize with interdict and excommunication, and at times unlawfully sequester their properties. Those who make complaints or with good reason have recourse to appeals against injustices, they sometimes seize or cause to be seized and cast into prison. There are prelates, moreover, who without legitimate reason do not permit chaplains, appointed by the religious superiors, to celebrate in the churches rightfully and legally belonging to the religious, or to administer the sacraments to the people of the parish. Others without justification suspend, excommunicate, seize, and incarcerate exempt abbots, monks, lay brothers, and even secular clerics who are in the service of the monastery, and place under interdict their churches and houses if they refuse obedience to them in those things in which they are under no obligation to obey. Moreover, in their demands for charitable aid from the exempt and those subject to them, the prelates exceed all reasonable measures. Contrary to law they impose on them unusual and excessive exactions. They burden their parochial churches in which they have the *jus patronatus* with new taxes and undue obligations. Just legal judgments or decisions made by the delegates of the Apostolic See or by the conservators in favor of the exempt, they do not permit to be made public or they withhold instructions to their subjects for their execution. They restrain public notaries from drawing up instruments, judges from administering justice, and attorneys from giving counsel and aid in legal matters of the religious. When superiors of exempt orders present their subjects for promotion to orders or benefices,

[137] Mansi, XXIV, 173; Hefele-Leclercq, VI, 232. Cf. also the Synods of Mainz (1310), canon 110, and Salzburg (1386), canon 11; Mansi, XXV, 335, XXVI, 730; Hefele-Leclercq, VI, 628, 1427.

it happens that bishops turn them away unless in the document by which such presentation is made they pledge obedience to them. For vacant churches in which the monasteries have the *jus patronatus,* bishops reject competent persons properly presented and appoint persons who are incompetent and unworthy. Again, churches with the *cura animarum* annexed, belonging to the maintenance of the abbots, the revenues of which are sometimes granted *ad firmam* to secular clergy, on the death of these are conferred by the bishops on their own clerics, though these churches are not on account of the death of these clerics really vacant. Some bishops unjustly appropriate to themselves the rights of the religious and so regulate matters in regard to revenues belonging to the churches that not enough remains for the livelihood of their rectors. At the behest of prelates, armed bands in violation of justice destroy the mills and other properties of exempt religious. They frequently send to the monasteries their relatives and nephews and sometimes also their animals together with the shepherds with the demand for free maintenance. Frequently also prelates compel abbots and priors of monasteries to grant to their relatives and nephews monastic properties or possessions either *in perpetuum* or *ad tempus,* concessions which we wish to be considered *ipso jure* invalid. The same abbots and priors they sometimes compel to present to them for vacant churches, in which they (the abbots and priors) have the *jus patronatus,* and at times even to receive into the order, their friends, relatives, or nephews. They also frequently permit and tacitly consent to the seizing of movable and immovable properties of monasteries in their territory with violence by soldiers, vassals, and even their own temporal officials in cases not permitted by law, and various other injustices they perpetrate against ecclesiastical persons and the people of the monasteries. Sometimes also, under pretext of privilege which they claim to possess for a certain time, they collect from vacant benefices the revenues of the first year and thus unjustly deprive abbots, priors, and others of revenues belonging to them. Not content with that, they unlawfully seize the horses, cattle, treasury, and other properties of monasteries and vacant benefices, all of which should be reserved to the successors. Some sell for a specified time the incomes of their dignities to soldiers and influential persons that by these the exempt religious located in the neighborhood may be more vigorously oppressed. Others destroy monasteries. There are not wanting those who seize houses, hospitals, and other movable and immovable properties of monasteries without thought of restoration. Moreover, many prelates without just cause prevent religious from repairing their places. Statutes are enacted derogatory to the privileges of exempt religious. In general, very many prelates inflict grave injuries and losses on religious, especially on those exempt and privileged, on their people and prop-

erties, and on their spiritual and temporal rights, and these things they do in violation of justice and of the privileges of the religious.

Wherefore, since for the regulars as well as for the secular prelates, for the exempt and non-exempt, there is one universal Church, outside of which there is no salvation, for all of whom there is one God, one faith, and one baptism, it behooves that all who are of the same body, be also of one mind and one will and as brothers be united to one another by the bond of charity. It behooves that the prelates and the exempt and non-exempt religious be content with their rights and avoid the perpetration of injuries and losses on one another. Therefore, by the present decree we strictly command all the prelates that they abstain absolutely and also see to it that their subjects abstain from giving further cause for complaints of the aforesaid nature, but let all exercise kindness toward religious men and treat them charitably, exempt, privileged and non-privileged, mendicant and non-mendicant, and let them inviolably respect and preserve their rights and privileges. And, since what is specially forbidden is usually feared more than what is generally forbidden, we, in the strictest and most emphatic manner, prohibit prelates to hinder in any way whatsoever abbots, priors, and other religious from attending their general and provincial chapters. (C. un., in Clem., De excess. praelat., V, 6.)

Comment. There is nothing to indicate that the decree is conciliar in form, though in the matter of content it has much in its favor of having been built up on conciliar material, namely, the numerous complaints handed in by the religious, exempt and non-exempt, mendicant and non-mendicant, against oppressions by bishops and prelates. Of prime importance in this connection is the note of the papal master of ceremonies, who informs us that in the third session decrees were read *de quibusdam excessibus prelatorum.*[138] More specific is the statement of the Munich MS: *Item de excessibus prelatorum est ordinatum, quod prelati monachos exemptos et non exemptos indebite non debent molestare vel in bonis eorundem impedire.*[139] Both of these declarations can refer only to the present decree. Moreover, when we consider that the conflict between the bishops and prelates on the one hand and the religious orders on the other was an outstanding issue before the council, we may be doubly certain that something was done to bring about harmony by restraining the excesses of both parties to the conflict. For, as was already stated, the fault was not all on one side, and so we have the following decree of this series dealing with the excesses of the religious orders.

On the other hand, how the present decree found its way through the

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[138] *Archiv*, V, 580 line 34.
[139] Müller, p. 687, no. 22.

council is far from clear. Certain it is that it did not receive the approval of the bishops, whose oppressive measures against the religious it laid bare before the eyes of the world in words that left no room for misunderstanding and at the same time served as a rebuke to the oppressors. Perhaps, and this seems probable, the decree was drawn up by order of the Pope on the basis of materials or complaints handed in by the religious, was read in the third session, but, because it was not submitted to a vote, was later, without the formula *sacro approbante concilio*, inserted by the Pope in the *Clementines*.

A strange feature of this decree is that it establishes or fixes no penalty for violation of its provisions. Indeed the only penalty it contains is in regard to bishops and prelates compelling abbots and priors to grant to their relatives and nephews monastic properties or possessions either *in perpetuum* or *ad tempus*, concessions which the Pope declared *ipso jure* invalid. Then at the end we have the strict prohibition against hindering religious from attending their general and provincial chapters. For all other excesses listed in the decree, no penalty is fixed. It is difficult to understand what the Pope hoped to accomplish by a mere enumeration of complaints; and it is equally difficult to understand why in the decree that immediately follows, which deals with the excesses of religious against bishops and prelates, he prescribed the severest ecclesiastical penalties for violation of any of its provisions, while in the present decree he said not a word about penalties for bishops and prelates whose excesses were no less reprehensible, indeed, in some cases more so, than those of the religious. I cannot agree with Dr. Müller's surmise that our decree originally contained penalties, which were later removed in consequence of the Pope's cognizance of the complaints of the prelates that his penalties against them were too severe.[140] If they were removed from this decree, why were they retained in the others? And if the Pope really mitigated them, why are they not in the decree? My surmise is that Clement V here merely followed the example of Gregory IX, who in his enumeration of twenty-seven complaints by religious against oppressions by bishops and prelates, simply concluded: *Quocirca mandamus, quatenus universi et singuli a praenotatis gravaminibus desistatis, subditos vestros ab hujusmodi arctius compescendo.*[141]

CANON 16

Summary. The Pope enumerates seven complaints of bishops and prelates against religious, and prescribes the penalties in case they do not desist.

[140] "Dixit etiam (papa), quod si prelatis esset grave, quod tot pene ponerentur in constitutionibus, paratus est minuere ad dictum prelatorum; nam sibi placebat, si ipsis placebat; et quod dimitterent aliquos, qui viderent illas constitutiones." *Archiv*, V, 581.

[141] Cc. 16, 17, X, De excess. praelat., V, 31. Müller, pp. 552-54.

Text. Religious who without special permission from the parish priest administer to clerics and laymen the sacrament of extreme unction or Viaticum, solemnize matrimony,[142] or who absolve anyone canonically excommunicated outside the cases expressed in law or granted to them by privilege of the Apostolic See, or who absolve from sentences imposed by provincial or synodal statutes, or who presume to absolve *a poena et culpa* (to use their own words), incur *ipso facto* the sentence of excommunication from which they can be absolved only by the Apostolic See. The local ordinaries, as soon as they have become aware of the fact of excommunication, shall publicly announce the name of the one excommunicated till it has been certified to them that he has obtained absolution; no appeal to exemption or other privileges shall avail in this matter.

In virtue of holy obedience and under threat of eternal malediction, we strictly forbid religious to speak in their sermons disparagingly of the prelates, or to lure their people away from their churches; to publish false or fraudulent indulgences, in the execution of testaments to influence testators to withhold from other churches legacies or what is due them in the way of restitution; to bring about that legacies, money owed or perhaps unjustly obtained, be bestowed on themselves or on other individual members of the order or on convents to the detriment of others; to absolve anyone from cases reserved to the Apostolic See or to the local ordinaries;[143] unreasonably to annoy ecclesiastical persons who prosecute to maintain their rights against religious, especially before judges delegated by us and to bring no one before a court in several places or before such as are too distantly located. Those who presume to act in contravention of the foregoing provisions or any part thereof, shall for a period of two months be subject to the penalties prescribed in the Rule or statutes of the order for grave crimes or offenses, dispensation from which may not be granted without a manifest necessity. Their prelates (that is, superiors), unless, on occasion of such excesses, within a month they make plenary satisfaction to churches or ecclesiastical persons for the damage or loss sustained when they are requested to do so by the parties concerned, incur *eo ipso* suspension till they have made such satisfaction, notwithstanding statutes or privileges of whatever tenor.

To those religious, however, who have been granted permission by the Apostolic See to administer the sacraments of the Church to their domestics or to the poor in their hospitals, the above provisions do not apply. (C. 1, in Clem., De privileg. et excess., V, 7.)

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[142] The Synod of Trier (1310) in canon 86 ordained that no priest may, without the permission of the pastor, bishop, or archbishop, solemnize marriage, perform burial rites, baptize, hear confessions, or administer the sacraments. Absolution imparted in violation of this is, except in cases of necessity, invalid. Mansi, XXV, 269; Hefele-Leclercq, VI, 618.

[143] Cf. Synod of Rouen (1299), canon 6. Mansi XXIV, 1206; Hefele-Leclercq, VI, 458.

Comment. To absolve *a poena et culpa*, that is, to grant, by means of a plenary indulgence, release from guilt and temporal punishment, with the understanding, of course, that the remission of the latter presupposes the remission of the former through the sacrament of penance. The formula was nothing more or less than the name for a plenary indulgence in the sense in which it is understood today. As early as the end of the thirteenth century the practice existed of calling a plenary indulgence an indulgence *a poena et culpa*. It was so called, it seems, not *a jure, sed a vulgo*, by the people,[144] and in the popular mind it meant simply the remission of the temporal punishment. In this sense also did the older theologians and canonists understand the plenary indulgence. How the people came to designate a plenary indulgence an indulgence *a poena et culpa* is a matter that has not yet been cleared up with any degree of certainty. The simplest explanation seems to be that they derived it from the language used by the preachers of the crusades, who, though they did not in their sermons speak explicitly of an indulgence *a poena et culpa*, nevertheless often declared that through the plenary indulgence granted by the pope every crusader is released from the guilt and temporal punishment (*a culpa et poena*), pointing out, however, the first and foremost condition of this release, namely, sincere contrition and confession. Jacques de Vitry (d. 1240), for instance, one of the most noted crusade preachers of the thirteenth century, in a sermon explaining the indulgence granted to the crusaders, tells the people of the great spiritual benefits God offers the crusaders, remission of all sins, both as to punishment and guilt, and over and above that, eternal life.[145] How this remission of all sins could be obtained by the crusaders, he explains in another sermon. Those crusaders who after a sincere confession die in the service of Christ are true martyrs, freed from all sins, venial as well as mortal; freed also from all penances imposed and from all temporal punishment in this world and in the next.[146] While the crusade preachers had in mind the total remission (*scil., a poena et culpa*) as above explained, the people, on the other hand, though they christened the plenary indulgence an indulgence *a poena et culpa*, nevertheless limited its effectiveness to only one part of that total, namely, the *remissio a poena*. Once in circulation, that indefinite and theologically incorrect formula later found its way sometimes into the vocabulary of

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[144] Bonifacius de Amanatis (d. 1399): "Nota quod absolutio a pena et a culpa sic vocata est non a jure, sed a vulgo." Paulus, *Gesch. d. Ablasses*, II, 146, note 4.

[145] "Tanta et talia offert vobis (Deus), quod sponte currere debetis, remissionem scilicet cunctorum peccatorum, quantum ad poenam et culpam, et insuper vitam aeternam." Pitra, *Analecta novissima spicilegii Solesmensis*, II (Parisiis, 1888), 422.

[146] "Liberati a peccatis venialibus simul et mortalibus, ab omni poenitentia sibi injuncta, absoluti a poena peccatorum in hoc saeculo, a poena purgatorii in alio." Pitra, II, 426.

theologians and of the educated laity and from there into official papal documents. In the bull *Inter sanctorum solemnia* of September 29, 1294, Pope Celestine V granted annually to all the faithful who, *vere poenitentes et confessi*, visited the Benedictine Church of St. Mary of Collemaggio at Aquila on August 29 (on that day and in that church took place the ceremony of his first coronation) an indulgence *a culpa et poena*.[147] There can be no doubt that this was a plenary indulgence. A curious feature of this bull is that it was composed by a layman, Bartholomew of Capua,[148] an official of Charles II, king of Naples, who merely embodied in the document an expression that was current among the people. In his bull *Antiquorum* instituting the first Christian jubilee in 1300, Boniface VIII granted a plenary indulgence in the following form: . . . *vere poenitentibus et confessis . . . non solum plenam et largiorem, immo plenissimam omnium suorum concedemus et concedimus veniam peccatorum*.[149] That is, those who with a contrite heart have confessed their sins—therefore, those whose sins have already been remitted through the sacrament of penance—are promised by the Pope in this plenary indulgence a pardon of all their sins. This shows how the grant of a jubilee indulgence was expressed in those days, an expression, it may be added, that has come unchanged down to our own day.[150] To the people it was simply an indulgence *a poena et culpa* and so also was it designated by contemporary chroniclers.[151] Bonifacius de Amanatis (d. 1399), in his commentary on the present Clementine decree, says that the pope only can grant a plenary pardon of all sins to those contrite of heart. This indulgence of all sins is an indulgence of temporal punishment only. The pope cannot absolve *a poena et culpa*, but only from the temporal punishment.[152] And in his commentary on that other Clem-

[147] "Omnes vere poenitentes et confessos qui . . . ad praemissam ecclesiam accesserint annuatim . . . a baptismo absolvimus a poena et culpa quam pro suis merentur commissis omnibus et delictis." Potthast, *Regesta*, 23981.

[148] Paulus, II, 143.

[149] C. 1, Extrav. comm., De poenit. et remiss., V, 9.

[150] Leo XIII in his bull promulgating the Jubilee for 1900 expressed the same idea in almost the same words: " . . . vere poenitentibus et confessis sacraque Communione refectis . . . plenissimam peccatorum suorum indulgentiam, remissionem et veniam misericorditer in Domino concedimus et impertimus." *Am. Ecclesiastical Review*, XXI (1899), 69 f.

[151] Villani, the Florentine chronicler, wrote with this indulgence in mind: "Fece somma et grande indulgentia . . . a tutti facea piena et intera perdonanza di tutti i suoi peccati, essendo confesso, o si confessasse, di colpa et di pena." Muratori, *Rerum Italicarum Scriptores*, XIII, 367. An anonymous chronicler of Modena says of it: "Concessit (scil., Bonifatius) remissionem omnium peccatorum *poenae et cuplae* omnibus vere poenitentibus et confessis." Muratori, *op. cit.*, XI, 75.

[152] "Papa potest solus concedere plenariam indulgentiam omnium peccatorum corde contrito . . . Ista indulgentia omnium peccatorum est indulgentia solum pene temporalis. . . . Non ergo papa absolvit a pena et a culpa, sed solum a pena temporali." Paulus, II, 146.

entine decree, *Abusionibus*,[153] in which the Pope condemned the practice of those *quaestores* or purveyors of indulgences who pretended to absolve *a poena et culpa*, the same Bonifacius says that the pope alone can grant a plenary indulgence of all sins. One of the abuses of the *quaestores*, he says, is that they rashly pretend to grant to their benefactors a remission of their sins. This indulgence, however, remits only the temporal punishment and can be gained only by those who have already obtained the remission of their sins.[154]

A plenary indulgence can be imparted by the pope in two ways: it may be done directly; or it may be done indirectly, that is, through the mediation of a priest, as is done today when a priest imparts a plenary indulgence to the dying. The latter was a very common way during the fourteenth and fifteenth centuries and developed into that outstanding abuse that gave occasion to the so-called Reformation. The indulgence so granted was designated, in this case correctly, *a poena et culpa*. It was granted by means of *Litterae indulgentiales*, also known as *confessionalia*. The possessor of such a letter or privilege was authorized to choose a confessor by whom he could, after a sincere confession, have himself absolved once during his lifetime and again *in mortis articulo* from all sins and also from papal reservations (a few excepted). This letter, moreover, authorized the confessor to impart a plenary indulgence to him after each of these two confessions. Sometimes the privilege limited the authority of the confessor to only one confession and one plenary indulgence.[155]

As to the conciliar character of the decree, the papal master of ceremonies testifies that in the third session were read decisions *de quibusdam excessibus religiosorum*.[156] The introduction to the fragments of the acts speaks of complaints handed in by the prelates against exempt religious.[157] More specific is the Munich MS when it declares "*Item quod nullum extraneum vel familiarem amicorum communicent aut inungant nisi familiam propriam et cottidianam secum in domibus existentem. Alioquin excom-*

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[153] C. 2, De poenit, et remiss., V, 9.

[154] "Nota quod solius romani pontificis est, indulgentiam seu plenariam remissionem peccatorum concedere. . . . Et iste est unus abusus horum questorum qui concedebant eorum temeritate benefactoribus ipsorum plenariam remissionem peccatorum. Hec autem indulgentia non operatur nisi corde contritis, et tunc peccata remittuntur in totum misericordia Dei, et pena eterna pro eis inflicta tunc commutatur in temporalem. Sicque dicta indulgentia nihil operatur quoad peccata jam remissa; operabitur ergo quoad ipsam penam temporalem, ut illa censeatur in totum remissa." Paulus, II, 146.

[155] On the question of the indulgence, cf. Paulus, *Gesch. des Ablasses*, II, 124-48; *id*., in *Zeitschr. f. kath. Theologie*, XXXVI (1912), 67-96, 252-79; Göller, *Der Ausbruch d. Reformation u. d. spätmittelalterliche Ablasspraxis*, Freiburg, 1917.

[156] *Archiv*, V, 580 line 34.

[157] *Ibid*., IV, 366 line 16.

municationis sentenciam incidunt ipso facto." [158] Whether the decree is conciliar in its entirety, is impossible to say. The omission of the formula *sacro approbante concilio* is no indication that it is not, especially when we recall that in the decrees of earlier councils that formula is found so seldom. That a portion of it is conciliar, there can be no doubt. Perhaps it is a decree that was reworked and enlarged after the council.[159]

CANON 17

Summary. Mendicants who transgress the constitution of Boniface VIII and those religious also who in their sermons and otherwise advise their hearers to withhold the payment of tithes, are *ipso facto* excommunicated. All religious must in their sermons and in the confessional exhort the people to pay their tithes, otherwise they shall be subject to severe penalties. Religious and secular clerics who influence people in their choice of a burial place, incur *ipso facto* excommunication.

Text. Desiring, by the addition of new penalties and the fear of their application, to restrain the boldness of those whom the rewards of virtue do not lead to the observance of the law, we decree that transgressors of the constitution [160] which forbids mendicant orders to acquire new houses or any places whatsoever, or to exchange those already acquired, or to transfer them to others under any title of alienation (without special permission from the Apostolic See), and those religious also who in their sermons or on other occasions presume to advise their hearers to withhold the payment of tithes due to the churches, incur *ipso facto* the sentence of excommunication. But, since it does not suffice to abstain from evil unless, concurrently with that abstention, something good is accomplished, we, under attestation of the divine judgment and under threat of eternal damnation, command all religious that whenever they preach to the people on the first, fourth, and last Sundays of Quadragesima, and on the feasts of the Ascension, Pentecost, the Nativity of St. John the Baptist, the Assumption, and the Nativity of the most blessed Virgin Mary, Mother of God, they explicitly exhort their hearers, if they have been requested to do so by the rectors of the churches, their vicars, or *loca tenentes,* to fulfil their obligations in the matter of paying their tithes. The same explicit admonition is to be given them in the confessional. Any deliberate omission of this on the days mentioned, shall be severely punished by their superiors. We also in virtue of holy obedience strictly command the superiors to enact laws in accordance with which such transgressors be so severely punished that their penalty may be an example to others.

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[158] Müller, p. 686, no. 11.
[159] *Id.,* pp. 538 f.
[160] C.un., VI°, De excess. praelat., V, 6.

The constitution of Gregory IX dealing with this matter is to remain in force.[161] Those, however, who deliberately neglect to impress upon those who confess to them the obligation of paying tithes, shall so long remain suspended from the office of preaching till they have advised the penitents in the matter of their obligation of paying tithes, if they can conveniently do this. Should they presume to preach without having fulfilled the aforesaid condition, they incur *ipso facto* the sentence of excommunication. This, however, we do not wish to apply to religious monasteries or rectors of churches who themselves have the right to receive tithes. Moreover, we decree that those bold violators of the constitution[162] which forbids religious and secular clerics to induce people to bind themselves by vow, oath, promise, or otherwise in their choice of a burial place in their churches or not to change their decision in regard to the one already selected, also incur *ipso facto* the same penalty (the penalty contained in the aforesaid constitution remaining in force), from which, except *in mortis articulo,* they can be absolved only by the Apostolic See, privileges or statutes of whatsoever tenor notwithstanding. (C. 3, in Clem., De poenis, V, 8.)

Comment. The first part of this decree is a renewal of the constitution *Quum ex eo* of Boniface VIII, which forbids mendicants to acquire new houses or to exchange or dispose of those already acquired, without the expressed permission of the Apostolic See. That it is a post-conciliar addition, there can hardly be any doubt. The second part, which requires religious to impress upon the people their obligation regarding the payment of tithes, is certainly conciliar in content. Substantially it agrees with the Munich MS,[163] which we may accept as the original, or at least as a slightly abbreviated transcription of the original conciliar draft, rough, unfinished, and devoid of the fine juridical precision that characterizes the present Clementine, a draft, therefore, that antedates the revision of the decrees in Monteux in 1314. It is one of those decrees which on account of the lack of time was at the conclusion of the council left unfinished and was afterward reworked, altered in some particulars and built up in the form in which we have it now. It was directed chiefly against the two great mendicant orders, Dominicans and Franciscans, as is evident from the text of the Munich MS and also from the constitution *Discretioni* of Gregory IX, of which it is a renewal. The third part, forbidding regular and secular clerics to influence people in their choice of a burial place, is a renewal of the constitution *Animarum* of Boniface VIII.[164] It was orig-

[161] C. 1, VI°, De decimis, III, 13.
[162] C. 1, VI°, De sepult., III, 12.
[163] Müller, 686, nos. 9 and 10.
[164] C. 1, VI°, De sepult., III, 12.

inally a separate, also unfinished, decree,[165] but was in the course of revision attached to the preceding ones, evidently to add its penalty of excommunication to those of the two preceding parts and bring it under the title *de poenis*.[166]

CANON 18

Summary. Friars Minor who during the time of an interdict admit to their churches for divine services members of their third order, are excommunicated, privileges to the contrary notwithstanding.

Text. **Since the admittance by the Friars Minor to their churches for divine services of the brothers and sisters of the third order, established by St. Francis, is a source of scandal to those who are excluded, thus creating in the minds of these a feeling of disrespect for ecclesiastical consures in general and of indifference to the effects of an interdict in particular, we strictly forbid the Friars Minor to admit in the future any of the aforesaid persons to their churches for the divine offices during the time of an interdict (even though the former or the latter should have privileges regarding this point, which, however, we do not wish to be applied in this case). Those who act in contravention of this incur *eo ipso* the sentence of excommunication from which they can be released only by the Roman pontiffs, or if they have made satisfaction, by the local ordinaries (who, however, must act in this matter by the authority of the Apostolic See). (C. 3, in Clem., De sentent. excomm., V, 10.)**

Comment. The conciliar origin of this decree is established beyond doubt by the Munich MS (no. 15), which reads as follows: *Item quod fratres minores, si tempore interdicti fratres aut sorores de ipsorum tercia regula in suis ecclesiis admiserint ad divina, mox sunt excommunicati, non per alium quam per summum pontificem aut episcopos locorum, qui in hac parte auctoritate funguntur apostolica absolvendi.* It is a verbatim renewal of a similar decree issued by Clement V in 1306.[167] As the reason for his action, the Pope declared that it was a source of scandal to those who were excluded. That the practice existed not in the order of the Friars Minor only, but was found also among other religious, is evident from the constitution *Ex frequentibus*, issued in 1310, in which Clement declares that he has heard many complaints by bishops, and from his own experience knows, that many religious do not observe the interdict.[168] If the Friars

165 Müller, 686, no. 13.
166 *Id.*, pp. 410 ff., 543 ff.
167 *Bull. Franciscanum*, V, no. 95.
168 C. 1, De sentent. excom., V, 10.

Minor are here singled out, it was no doubt because the practice was more widespread among them by reason of the large membership of their third order.[169]

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[169] Müller, pp. 545 f.

THE SIXTEENTH GENERAL COUNCIL (1414–18)

Council of Constance

History. The Council of Pisa (1409), in its efforts to put an end to the so-called Western Schism, had made an intolerable situation still more intolerable, for instead of two there were now three popes, Gregory XII, Benedict XIII (both deposed by the council), and its own creation, Alexander V, who, however, soon died (May 2, 1410) and was succeeded (May 17) by Cardinal Baldassare Cossa as John XXIII. But it served, more than anything had done so far, to impress on men's minds the seriousness of the crisis and the necessity of resorting to more efficacious means for its solution than had hitherto been employed. Emperor Sigismund—and in this he stood not alone—in view of the fact that its decisions had been and still were contested, favored as the only solution a general council on German territory that was to go over the entire ground anew and put an end to the scandalous divisions that were proving so disastrous to the Church. On the first point, that is, a general council, he had reached an agreement with John XXIII and, utilizing the predicament in which that pope had been placed by the violence and perfidy of Ladislaus of Naples, forced him (October, 1413) to accept Constance, a free city of the Empire, as the place for holding the council. To preclude a change of mind on the part of the Pope, he announced to the Christian world (October 30) that, in accordance with an agreement reached with John XXIII, a general council would open in Constance on November 1, 1414, and that he himself would be present in person. On the same or the following day, he invited Gregory XII and Benedict XIII and the King of France to attend. John XXIII issued the bull of convocation from Lodi, Italy (December 9, 1413), and invited all prelates, princes, etc., to be in Constance on November 1, 1414. The purpose of the council was threefold: (1) the extinction of the schism, (2) the repression of heresy, and (3) the reformation of the Church in its head and members. It was opened November 5, 1414, in the cathedral of Constance, where all the public sessions were held, and came to a close April 22, 1418, consisting of forty-five sessions. Owing to its long duration, the attendance varied. The largest number present at any one time was 29 cardinals, 3 patriarchs, 33 archbishops, 150 bishops, 100 abbots and generals of religious orders, 50 provosts, and 300 doctors of theology and canon law. In addition there were present about

5,000 monks and friars. The number of visitors is variously given as from 50,000 to 100,000. Besides Emperor Sigismund, there were present the following: the Electors Ludwig von der Pfalz and Rudolph of Saxony, the Dukes of Austria, Bavaria, Saxony, Schleswig, Mecklenburg, Lorraine, and Teck, the Margrave of Brandenburg, and the representatives of the Kings of France, England, Scotland, Denmark, Poland, Naples, and the Spanish kingdoms. Toward the end of the council there was present also the Greek Emperor with nineteen Greek bishops.

The first public session was held November 16, and was presided over by John XXIII. From the beginning there was present a preponderant element, the Italian prelates, that wished to have the council regarded as the continuation of that of Pisa, and John XXIII as the legitimate pope. That was the desire also of John himself. It soon became evident, however, that many members of the other nations, including Emperor Sigismund, were for throwing overboard all previous deliberations, and they strongly favored the voluntary abdication of the three popes and the election of a new one. In January, 1415, the representatives of Benedict XIII arrived to propose a meeting of their Pope with the Emperor at Nice. Toward the end of the same month, Gregory XII, through his representatives, announced his willingness to resign on condition that the other two popes follow his example. The introduction of the method of voting by nations instead of by persons broke the power of the Italian majority, which, together with a bitter attack on his life and character, left John no ground to stand on. On March 2, 1415, he promised under oath to resign, but on the twentieth of the same month, disguised as a hostler and accompanied only by a boy, he fled to Schaffhausen, then the territory of his friend Frederick duke of Austria-Tyrol. In this contingency, the council, being without a head, in order to save itself, drew up and adopted in the fifth session (April 5) the famous decrees, the *Articles of Constance*. These were five in number and declared: (1) that the council, legitimately convened in the Holy Spirit, is a general council, represents the Church militant, and has its authority immediately from God, and that every Christian, whatever his state or dignity, even the pope, is bound to obey it in all things that pertain to faith, to the extirpation of the schism and the reform of the Church in head and members; (2) that all, even the pope, who refuse obedience to the decrees and decisions of this council or of any general council legitimately convened, are subject to ecclesiastical punishment and if necessary to other (civil) penalties; (3) that without the consent of the council John XXIII may not call away from Constance the Roman curia and its officials, whose absence might compel the dissolution or impede the work of the council, and any penal measures directed by him against them or any member of the council to compel such desertion are null and

void; (4) that all censures inflicted since his departure by him on members and adherents of the council are null; and (5) that he and all members of the council have enjoyed and still enjoy full liberty.

The first two of these decrees established the complete supremacy of the council over the pope; not only this council of Constance but every general council is, independently of the pope, the ultimate or final depository of supreme ecclesiastical authority. It is true, in matters of faith the pope plays the chief part and his decrees apply to the whole Church, yet his decisions, pending the consent of the Church (represented by the general council), are not irreformable.[1] This action of the council may be

[1] The idea of the superiority of a general council over the pope did not originate in the Council of Constance; indeed, in 1415 it enjoyed the distinction of having passed its century mark. Its first glimmerings are found in the memorable conflict between Philip the Fair of France and Boniface VIII, when the former appealed from the latter to a future general council, the implication being that the council is superior to the pope. It was a distinctively Gallican idea. It possessed little or no vitality of its own, but grew up, thrived, and became a disturbing factor in the Church by mere force of external circumstances. In the course of its development it became associated with other ideas still more inimical to the papacy. It reappeared in the bitter struggle of Louis of Bavaria and the fanatical Fratricelli against John XXII. It grew in power and proportion under the pens of that evil genius of the fourteenth century, William of Ockham, of Marsilius of Padua and John of Janduno, all three professors at the University of Paris, the two latter collaborating in the composition of the famous or rather infamous *Defensor pacis*, a work directed against John XXII and replete with the crudest revolutionary ideas. Louis the Bavarian welcomed the work and enlisted its authors in his service. The Pope in a letter of April 3, 1327, rebuked him for harboring and encouraging *duos perditionis filios et maledictionis alumnos* (Denifle, *Chartul.*, II, no. 864). According to the *Defensor pacis* the Church has no visible head. The primacy of Rome is the result of historical development. The priority of Peter among the Apostles was merely a chronological one, for the power and authority that he received was later conferred on all of them; hence he stood on a level with the others. The pope has only the power of convoking a general council, which is superior to him. His decrees have no binding force; he can impose on the people only the decisions and interpretations of the general council. The foundation of the Christian faith is the Holy Scriptures, whose interpretation and explanation belong not to the pope but to the general council. Christian teaching and the administration of the sacraments belong to the Church, the rest belongs to the state, that is, to the temporal ruler. The spiritual power possesses no jurisdiction, not even in the sacramental forum. The power of orders is indeed derived from God, but all jurisdiction exercised by the Church is delegated jurisdiction. According to Marsilius, then, the Church is merely a department of the state. These ideas were too far in advance of the times and do not seem to have exercised any great influence on the movement to subordinate the pope to a general council. They served their purpose better in the following century in the hands of the so-called reformers, who were not slow to utilize them. In a general way, however, they served to keep alive the agitation for such subordination. Considerable impetus was given to this movement by the schism when a general council superior to the pope was held to be the only means of putting an end to an unbearable situation. Unfortunately, during this period of upheaval and confusion, many good men in their eagerness to emerge from schism and return to unity, lost their heads, and temporary expedients often became dogmas. The system is known as the Conciliary Theory. Briefly, it denies the divine origin of the papal primacy, makes the general council (as the representa-

called the legitimation of Gallicanism. Having established its authority, the council proceeded to suspend John XXIII (tenth session, May 14, 1415). In the meantime, Schaffhausen being menaced by the imperial army, John fled to Laufenburg, then to Freiburg in Breisgau, and from here to Breisach on the Rhine, whence after a brief stay he was compelled to return to Freiburg. Abandoned by his friend Frederick duke of Austria-Tyrol, he was seized by deputies of the council and imprisoned in the castle of Radolfszell near Constance. Weary and morally vanquished, he threw himself on the mercy of the council. In the twelfth session (May 29, 1415) he was deposed for simony, for supporting the schism, and for scandalous life. Two days later he himself under oath ratified the sentence of the council.

The next to resign was Gregory XII, and this he did with all the dignity and independence becoming a pope. Though his adherents had by this time dwindled to almost nothing, he is usually considered by Catholic historians as the true and legitimate successor of Gregory XI. In keeping with his promise to resign in the interests of union, he now sent to Emperor Sigismund (not to the council, which he did not recognize) as his proxies Prince Carlo Malatesta of Rimini and the famous Dominican, Cardinal John Dominici of Ragusa; the former, his loyal and powerful protector, the latter, his friend and adviser, who, since December 19, 1414, had been his representative at Constance. The bull carrying his resignation contained two conditions: first, that the council be reconvoked by himself and, secondly, that neither Baldassare Cossa nor anyone representing him preside at the session which accepted his resignation. These conditions were agreed to and in the fourteenth session (July 4, 1415), which was presided over by Emperor Sigismund to give the impression that the council had been called by a civil authority, Cardinal John of Ragusa, in Gregory's name, reconvoked the council and authorized its succeeding acts. Thereupon Cardinal Viviers bishop of Ostia assumed the presidency, and Malatesta, in the name of Gregory, read the latter's resignation and abdication of all rights to the papacy. These acts Gregory confirmed in the seventeenth session (July 14, 1415).

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tive of all the faithful) the sole representative of the Church, the sole organ of infallibility, and reduces the pope to a mere figure-head. It was restated by Conrad of Gelnhausen and Henry of Langenstein, professors at the University of Paris, and perfected by two other members of that institution, Pierre d'Ailly and Jean (le Charlier de) Gerson, leading spirits at the Council of Constance. Kneer, *Die Enstehung der konziliaren Theorie, Suppl.* vol. I of the *Röm. Quartalschrift*, 1893; Hirsch, *Die Ausbildung der konziliaren Theorie im XIV Jahrh.*, Wien, 1903; Hull, *Medieval Theories of the Papacy* (London, 1934), chapters VI and VII; Previte-Orton, *The Defensor Pacis of Marsilius of Padua*, Cambridge, 1928. This is the first critical edition of the *Defensor pacis* and from the viewpoint of literary workmanship a very remarkable work.

To obtain the abdication of Benedict XIII was now next in order. The meeting between him and the Emperor and deputies of the council at Perpignan (September–October, 1415) proved fruitless. All efforts to overcome his obstinacy seemed but to strengthen it. Those who hitherto had been his chief supporters—the Kings of Aragon, Castile, and Navarre, and the representatives of Scotland—weary and unwilling any longer to support a pope whose actions were dictated by whims and whose hard stubbornness caused the failure of every plan for union, therefore pledged themselves by the Treaty of Navarre (December 13, 1415) to co-operate with the council in everything that would extirpate the schism and bring about the election of a new pope. St. Vincent Ferrer, hitherto his confessor and chief support, now also abandoned him. He was deposed in the thirty-seventh session (July 26, 1417) as a perjurer, a heretic, and schismatic.

The three popes being removed, the next step was to elect a new one. Differences of opinion, however, arose at once over the priority of papal election and curial reform. The Italian, French, and Spanish nations demanded an immediate papal election, declaring that an acephalous Church is a deformity and monstrosity and that the election of a pope is the most important work of reform. To enforce their position they pointed to the wretched condition of the States of the Church, some of which had fallen prey to the devastating greed of republican factions, while others had been seized by the Neapolitans. The English and Germans, on the other hand, insisted uncompromisingly on the priority of such reforms as seemed urgent in the administration of the papacy and the Curia. They felt that when once the pope was elected all efforts at reform, *saltem in curia Romana*, would be relegated to the limbo of oblivion, followed by the same old administrative abuses. An atmosphere of uneasiness and suspense was created by this deadlock, which, however, was dissipated by the sudden death of Bishop Robert of Salisbury, the leader of the English nation at the council. The English now went over to the side of those three nations that desired an immediate papal election, and thus the Germans were left alone. With the aid of the English Bishop, Henry of Winchester, who at the time happened to be in Constance on a pilgrimage to Jerusalem, a reconciliation in favor of an immediate election was finally effected on the following conditions: (1) that by a synodal decree adequate assurances be given that the new pope will at once undertake a reform of all abuses; (2) that those reform decrees on which all the nations agreed be published at once; and (3) that a *modus* of this papal election be agreed upon.

Under this agreement the council in its thirty-ninth session (October 9, 1417) proceeded at once to pass five reform decrees, the first of which was the famous *Frequens*, which reads substantially as follows: In the future, general councils shall be held frequently. The next one shall be held

five years hence, the following one seven years later, and after that one shall be held every ten years. The pope may with the consent of the cardinals abbreviate these periods, but he may not extend them. The place of assembly is in each case to be determined one month in advance of the dissolution of the existing council by the pope with the concurrence of the council, or if he should fail to do so, by the council itself, and is not to be changed even by the pope except in case of a blockade, war, or pestilence, and then only with the written consent of at least two-thirds of the cardinals. If for some reason, however, it should be necessary to change the place of the assembly, another is to be chosen, which must be in the vicinity of the one abandoned and within the territorial boundaries of the same nation. Only when an obstacle to such assembly extends itself over the entire nation, may a locality within the territory of another nation be chosen. Every change in regard to time and place must be announced by the pope a year in advance of the opening of the council.[2]

After considerable wrangling in the fortieth session (October 30) the method of election was agreed to, for under the circumstances it was not possible to adhere to the usual form, that is, by the cardinals alone. The majority of the council harbored strong feelings of antipathy toward the cardinals, whom they regarded as the originators of the schism, responsible in some measure for its prolongation and ravages, and responsible also for the many crying abuses in ecclesiastical government. With this feeling against them, there existed the possibility that they or some of them might afterward declare the election invalid on the ground that their freedom in this matter had been curtailed by fear, and thus might give rise to a new schism. Hence, to insure freedom of election and thus avoid a repetition of what had happened soon after the election of Urban VI, it was agreed that for this occasion only there should be added to the twenty-three cardinals six deputies from each nation represented at the council, making a body of fifty-three voters—[there were five nations, German (including the Poles, Hungarians, Danes, and Scandinavians), English, French, Italian and Spanish]—and he was to be considered elected who had received two-thirds of the votes not only of the cardinals but also of the deputies. In this session also was published the decree calling for the reform of the Church *in capite et curia Romana* to be undertaken by the new pope. It contained eighteen points that were to be made the object of reform. These included, (1) the number, character, and nationality of the cardinals, (2) papal reservations, (3) annates and other taxes (*servitia communia et minuta*), (4) the collation of benefices and *gratiae exspectativae*, (5) causes or processes that belong to the Roman curia and those that do not, (6) appeals to the Roman curia, (7) the offices of the papal chancery and peni-

[2] Hefele-Leclercq, *Hist. des conciles*, VII, 459 ff.

tentiary, (8) exemptions and incorporations made during the time of the schism, (9) commendams, (10) confirmation of elections, (11) revenues during the vacancy of ecclesiastical offices, (12) the alienation of goods of the Roman and other Churches, (13) the manner in which and the reasons for which a pope (even when not a heretic) may be corrected or deposed, (14) the extirpation of simony, (15) dispensations, (16) the revenues of the pope and the cardinals, (17) indulgences, and (18) tithes. The forty-first session (November 8, 1417) was devoted to the consideration of the details of the election and for this purpose was read the constitution *Licet* of Clement VI (December 6, 1351),[3] which mitigated the rigorous provisions of Gregory X in regard to the number of servants and the amount of food to be allotted to the electors while in conclave.[4] On the afternoon of the same day the electors assembled in conclave in the public trading-house of the city, and three days later unanimously elected the Roman Cardinal Otto Colonna, who took the name of Martin V. Thus came to an end the Great Schism of the West.

The major current heresies dealt with by the council at various times during its course were those of Wyclif and Hus. Of the former it condemned 305 propositions taken from his writings; these writings it ordered to be burned, and his body to be removed from consecrated ground. Of all heretical preachers of that time, Hus was undoubtedly the most eloquent. At his trial during the month of June, 1415, he disowned some of the teachings attributed to him, but defended others that were *prima facie* heretical. All efforts to induce him to retract proved unavailing. His writings were ordered to be burned. In the fifteenth session (July 6, 1415) he was condemned as a heretic and handed over to the secular power to perish at the stake.

Equally as important as the extirpation of the schism was ecclesiastical reform. Long before the Council of Constance the need for a drastic reformation of ecclesiastical conditions had been sorely felt. The demand for it was general, vehement, and earnest. The many grave abuses connected with the administration of the French popes during their seventy years of residence in Avignon, followed immediately by the ravages of divisions that rocked the Church to her foundations, divisions brought about mostly by men guided by self-interest and politics, together with civil disturbances that kept western Europe in a constant state of turmoil, created in the hearts of all good people a supreme disgust with existing conditions. It soon became evident, however, that those who had placed their hopes in the council as an instrument to bring about a betterment of conditions were

[3] Von der Hardt, *Magnum Oecumenicum Constantiense Concilium* IV, 1462 ff.; *Bullar. diplomaticum et privileg. S. Rom. Pontif*, Editio Taurinensis, IV (1859), 501.
[4] Cf. canon 2 of the Second Council of Lyons.

doomed to bitter disappointment. The reform which the council had set itself to effect, was a subject filled with high explosives. It could not be broached without stirring up discords and dissensions, so that the first three years of its career may be justly characterized as so many years of quarrels and intrigues. The reforms uppermost in the minds of the bishops were the restoration to them of their former freedom in the collation of benefices and the reduction of taxes and various other assessments payable to the Holy See from ecclesiastical properties and revenues, which taxes and assessments, though they had during the past century increased in number and size, were, nevertheless, not always without justification. The situation may be summed up thus: each one was prepared to support legislation that was calculated to reform his neighbor, but as for personal reform there was no eagerness. In the early part of its career the council had appointed two reform commissions. The results were, the subordination of the pope to a general council, the annihilation of the Sacred College, and the substitution of constitutional for monarchical government in the Church—monstrosities which no pope could accept or approve. On the day after his coronation (November 22), Martin V appointed a new reform commission, but like its predecessors it also failed on the score of unanimity. It was then decided to divide the reform decrees into two classes, general and particular. The former to deal with points of general reform on which all the nations represented at the council would unanimously agree, the latter to consist of special concordats between the Holy See and individual nations.[5] To expedite the work, the Pope on January 20, 1418, laid before the council the drafts of eighteen general decrees, formulated on the basis of the above eighteen points of the fortieth session (he rejected number thirteen, which dealt with the deposition of the pope), and declared that he would accept any or all that were unanimously agreed on. Finally, after two more months of wrangling, the council in the forty-third session (March 21, 1418) came to such an agreement on seven decrees.[6] These applied to the entire Church. Particular reform legislation was left to the initiative of each nation which made provision for it by special concordats with the Holy See. These were three in number. The German Concordat and that with France, Spain, and Italy, continued in force for five years, that is, till the next general council; that of the English was indefinite.[7]

Another matter dealt with by the council was the question of the licit-

[5] Hefele-Leclercq, VII, 488 ff.

[6] *Ibid.*, pp. 531 ff.

[7] *Ibid.*, pp. 535; Hübler, *Die Konstanzer Reform u. d. Konkordate v. 1418*, Leipzig, 1867.

ness of tyrannicide, the claim that subjects have the right to put a tyrant to death or cause him to be put to death for the common good and as a public enemy. In the twelfth century this right was maintained and defended by John of Salisbury (d. 1180), and in the fifteenth century by John Parvus (Jean Petit), who publicly defended the Duke of Burgundy for his share in the murder of Louis of Orleans, brother of King Charles VI. In its fifteenth session (July 6, 1415) the council condemned the following proposition: "Any vassal or subject may lawfully and meritoriously kill, and ought to kill, any tyrant; he may for this purpose have recourse even to secret plots, flattery, or feigned friendship, regardless of any oath of fealty to him or pact made with him, and without any judicial decree or command." [8] Similar was the case a few years later of John of Falkenberg, a German Dominican. In the conflict between the Teutonic Order of Knights of Livonia and the King of Poland, he took sides with the former and in a violent work declared it lawful to kill the latter and all his subjects. A conciliar commission, after an examination of the work, recommended that it be consigned to the flames; no definite sentence, however, was pronounced against its author.[9] In the forty-fifth and last session (April 22, 1418) Polish and Lithuanian representatives demanded the formal condemnation of Falkenberg by the council. The Pope's reply that in matters of faith he approves and ratifies only what has been decided by the general council *conciliariter*, that is, by the whole council and not by one or more nations and nothing else nor in any other manner, must be understood to apply to the specific case of Falkenberg only and not to all the decrees of the council, not even to those dealing with matters of faith.[10] Similarly, when in the bull *Inter cunctas* (February 22, 1418), apropos of the Wyclifites and Hussites, Martin V called for a formal acceptance or approval of the decrees of the council *in favorem fidei et salutem animarum*, this is to be understood as applying only to those acts or decisions of the coun-

[8] Denzinger, *Enchiridion*, no. 690. This condemnation was renewed by Paul V in *Cura Dominici gregis*, January 24, 1615.

[9] Bess, "Johannes Falkenberg, O.P. u. d. preusisch-polnische Streit vor d. Konstanzer Konzil," and "Die Lehre vom Tyrannenmord auf d. Konstanzer Konzil," in *Zeitschrift f. Kirchengeschichte*, XVI (1896), 385–464; XXXVI (1916), 1–64; Springmann, *Polen u. der Deutsche Orden z. Zeit d. Konzil v. Konstanz*, Freiburg i. Br., 1922.

[10] "Quibus sic propositis, protestatis, requisitis et oblatis, praefatus sanctissimus dominus noster papa, cum nonnulli alii multum dicerent et tumultum facerent, imposito omnibus silentio, dixit, respondendo ad praedicta: *Quod omnia et singula determinata et conclusa et decreta in materiis fidei per praesens sacrum concilium generale Constantiense conciliariter tenere et inviolabiliter observare volebat et nunquam contravenire quoquomodo. Ipsaque sic conciliariter facta approbat papa, omnia gesta in concilio conciliariter circa materiam fidei, et ratificat et non aliter nec alio modo.*" Funk, *Kirchengeschichtl. Abhandl. u. Untersuch.*, I (Paderborn, 1897), 489–98; Hübler, *Die Konstanzer Reform*, pp. 263–80.

cil that were directed against the aforesaid heresies.[11] Eugene IV (July 22, 1446) approved the council and its decrees in so far as these are not prejudicial or in any way derogatory to the rights, dignity, and supremacy of the Apostolic See (*absque tamen praejudicio juris, dignitatis et praeeminentiae sedis apostolicae*). The council is ecumenical only in its four last sessions (42–45), presided over by Martin V, and in the decrees of earlier sessions that have been approved.[12]

The following are the seven general disciplinary decrees enacted by the council in the forty-third session.

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[11] Denzinger, nos. 581–625, errors of Wyclif condemned in VIII session; no. 626, communion under one kind, XIII session; nos. 627–56, errors of Hus condemned in XV session. Hefele-Leclercq, VII, 223, 283, 307. For the bull *Inter cunctas*, Hefele-Leclercq, VII, 511 ff.

[12] *Sources:* H. von der Hardt, *Magnum Oecumenicum Constantiense Concilium*, 6 vols. fol., Frankfort and Leipzig, 1697–1700; Hardouin, *Conciliorum coll.*, VIII; Mansi, *Conciliorum ampliss. coll.*, XXVII–XXVIII; Finke, *Acta Concilii Constantiensis*, 4 vols., Münster, 1896–1928; *id.*, *Forschungen u. Quellen zur Gesch. d. Konstanzer Konzils*, Paderborn, 1889; Döllinger, *Beiträge z. polit., kirchl. u. Culturgesch. d. sechs letzten Jahrh.*, II (Regensburg, 1863), 299–392; Martène and Durand, *Thesaurus novus anecdotorum*, II; *Deutsche Reichstagsakten (1376–1442)*, hrsg. von Weisäcker, Herre, Beckmann u. a., 15 vols. (1867–1921), VII–XII.

Literature: Hefele-Leclercq, *Hist. des conciles*, VII, 71–584; Pastor, *History of the Popes*, Vol. I, Bk. II; Bess, *Studien zur Gesch. d. Konstanzer Konzils*, I, 1891; Blumenthal, *Die Vorgesch. d. Konstanzer Konzils bis zur Berufung*, Halle, 1897; Finke, *Bilder vom Konstanzer Konzil*, 1903; Hollnsteiner, "Studien zur Geschäftsordnung am Konstanzer Konzil," in *Festschrift f. Finke* (1925), pp. 240–57; *id.*, "Das Konstanzer Konzil in d. Gesch. d. christl. Kirche," in *Mitteilungen d. Instituts f. österr. Geschichtsforschung, Suppl.* Bd. XI, 1929; Fromme, *Die spanische Nation u. das Konstanzer Konzil*, Münster, 1896; *id.*, "Die Wahl d. Papstes Martin V," in *Röm. Quartalschrift*, X (1896), 133–61; Blumenthal, "Johann XXII, seine Wahl u. seine Persönlichkeit," in *Zeitschr. f. Kirchengesch.*, XXI (1901), 488–516; Truttmann, *Das Konklave auf d. Konzil zu Konstanz*, Strassburg, 1899; Riegel, *Die Teilnehmerlisten d. Konstanzer Konzils*, Freiburg i. Br., 1916; Keppler, *Die Politik des Kardinalskollegium in Konstanz von Januar bis März 1415*, Münster, 1899; Hollerbach, "Die gregorianische Partei, Sigismund u. d. Konstanzer Konzil," in *Röm. Quartalschr.*, XXIII (1909), 129–65; XXIV (1910), 3–39, 121–40; Sauerland, "Card. Johannes Dominici u. sein Verhalten zu d. kirchlichen Unionsbestrebungen während der Jahre 1406–1415," in *Zeitschr. f. Kirchengesch.*, IX (1888), 240–92; X (1889), 345–98; *id.*, "Kardinal Johann Dominici u. Papst Gregor XII," *ibid.*, XV (1895), 387–418; Mandonnet, "Beiträge zur Gesch. d. Kardinals Giovanni Dominici," in *Hist. Jahrb.*, XXXI (1900), 388–402; Fages, *Hist. de Saint Vincent Ferrier*, Louvain, 1901.

The Schism: Gayet, *Le grand schisme d'Occident*, 2 vols., Paris, 1889; Salembier, *Le grand schisme d'Occident*, Paris, 1902; transl., *The Great Schism of the West*, New York, 1907; Valois, *La France et la grand schisme d'Occident*, 4 vols., Paris, 1896–1902; Bliemetzrieder, *Das Generalkonzil im grossen abendländ. Schisma*, Paderborn, 1904; *id.*, "Raimund v. Capua u. Caterina v. Siena zu Beginn d. grossen abendländ. Schisma," in *Hist. Jahrb.*, XXX (1909), 231–73; Sechendorff, *Die kirchenpolitische Tätigkeit d. hl. Katharina v. Siena unter Papst Gregor XI (1371–78)*, Berlin, 1917; Souchon, *Die Papstwahlen in d. Zeit d. grossen Schismas (1378–1417)*, 2 vols., Braunschweig, 1898–99. For further literature on the council and the schism, cf. Funk-Bihlmeyer, *Kirchengeschichte*, II (Paderborn, 1930), 272 ff. The best edition of the concordats by Mercati, *Raccolta dei concordati*, Roma, 1919.

1

Wishing to remove what is derogatory to the jurisdiction of the ordinaries, we,[13] with the approval of the holy council, revoke all exemptions from episcopal jurisdiction granted since the death of our predecessor, Gregory XI, by some Roman pontiffs or alleged pontiffs in their various obediences, either of their own free will or by request, to churches, monasteries, chapters, convents, priories, benefices, localities, and persons not exempt before the death of Gregory XI, even those which we ourselves have with full knowledge approved or renewed without consulting the party concerned. Excepted are those that had been granted to a whole order and to churches, monasteries, chapters, convents, benefices, or localities founded before the aforesaid time *sub exemptionis conditione*, to universities and colleges, and all perpetual exemptions granted by the pope through inferiors. Exemptions granted before the death of Gregory XI are not in any way affected by the present constitution. Moreover, in the future we do not intend to grant exemptions unless the reason is known and the party concerned has been consulted.

2

Since, in regard to the unions and incorporations of benefices made or granted since the death of Gregory XI, a certain and definite rule cannot be given, we shall revoke them *justitia mediante* on complaints of those interested if they have not been granted for good reasons. Those, however, who have themselves obtained such united benefices, cannot complain.

3

The revenues of churches, monasteries, and benefices during their vacanies we leave to be disposed of in accordance with rights, custom, and privilege, and we forbid that they be given to us or to the Apostolic camera.

4

Many constitutions have in the past been directed against simony, without, however, destroying the evil. Wishing to provide more stringent measures for the future, we, with the approval of the holy council, declare that those ordained simoniacally are *eo ipso* suspended from the exercise of their orders. All elections, postulations, confirmations, etc., simoniacally obtained in the future are *ipso jure* null and void and no right accrues to anyone through

[13] It is the Pope speaking in these decrees.

them. Those promoted, confirmed, etc., simoniacally may not receive revenues, but they shall be bound to their restitution as possessions unjustly obtained. Moreover, we declare and decree that in the matter of simony both he that gives and he that receives incur *ipso facto* the sentence of excommunication, and this applies also to the papal and cardinalitial dignity.

5

Since benefices are granted by reason of the offices attached to them, we consider it absurd that anyone who obtains a benefice should refuse or neglect to exercise the office. We, therefore, with the approval of the holy council, revoke all dispensations granted by any alleged pontiff to anyone elected, confirmed, etc., to any church, monastery, priory, convent, diaconate, archdiaconate, or to any benefice, to the exercise of which offices there is attached a corresponding order and from the reception of which order, or blessing in the case of an abbess, he was relieved by dispensation. This, however, does not include those dispensations granted by Boniface VIII in the constitution *Quum ex eo.*[14] We decree, furthermore, that those who at present hold benefices, etc., in virtue of such dispensations, receive the required orders or blessings within six months from the day of the publication of this constitution, and those who obtain such dispensations in the future to receive the necessary orders within the period prescribed by the law. Otherwise they are *ipso jure* deprived of their benefices, etc., which may then be freely conferred on others. Other constitutions dealing with this matter are to remain in force.

6

We command and decree that the laws forbidding that tithes and other obligations be imposed on the churches and ecclesiastical persons by anyone inferior to the pope, be strictly observed. By us, however, such tithes and obligations may not be imposed *generaliter* on the entire body of the clergy unless the needs of the universal Church should require it, and then with the advice and consent of our brethren, the cardinals, and of those prelates whose advice can conveniently be obtained. Nor may we impose such obligations on the clergy of a particular country or province without first consulting the prelates of that country or province and obtaining the consent of the majority. In the latter case the tithes and other obligations imposed may not be collected except by ecclesiastical persons with Apostolic authority.

[14] C.34, VI°, De elect., I,6. Cf. also Gregory X in Second Council of Lyons, canon 13.

7

Among other excesses of prelates and clerics, this one stands out most prominently, that, ecclesiastical propriety in dress being spurned, many delight in what is unbecoming and desire to adopt the ways of the laity, exhibiting outwardly in dress what they entertain inwardly. Wherefore, with the approval of the holy council, we renew and command all earlier legislation in regard to clerical clothes, tonsure, and habits in form as well as in color, also in regard to the hair and to clerical decorum and integrity, to be strictly observed; which legislation has been too much disregarded by both the secular and the regular clergy. With the approval of the same council we decree, moreover, that that abuse especially which prevails in certain localities, namely, that some clerics and ecclesiastical persons and (what is more deplorable) even prelates wear gloves that extend to the elbows, and long, sumptuous garments separated at the back and sides and adorned with furs, and with the surplice and other ecclesiastical vestments over these presume to be present at divine services in the church, must be absolutely suppressed. This impropriety of dress we reprobate in any and all ecclesiastical persons and prohibit the use of such. Those who act in contravention of this provision shall be punished as transgressors of the law. We decree, moreover, that any incumbent of a benefice or of any ecclesiastical office who presumes to be present at divine services in garments of that kind, shall for each offense be deprived for one month of his portion of the ecclesiastical revenues, which portion shall be applied to that church.

THE SEVENTEENTH GENERAL COUNCIL (1431–49)

Council of Basle

History. The success of the Council of Constance in ending the schism, constituted for many a strong argument in favor of the conciliar theory, that is, the complete subordination of the pope to the general council. According to this theory the general council was to be a permanent institution, convoked by the pope at regular intervals, but superior to him in all things that pertain to the government of the Church. The papal monarchy, elective yet absolute, was to be replaced by a constitutional oligarchy. It was in accordance with this theory that the Council of Constance in its thirty-ninth session (October 9, 1417) promulgated five decrees, the first of which being the famous *Frequens*, in conformity with which a general council was to be held every ten years, the following two, however, were to be convoked by the pope after five and seven years respectively. Needless to say, Martin V repudiated these decrees. The question was, who was to govern the Church: the pope or the council? The successor of St. Peter, or a more or less self-constituted religious parliament arrogating to itself an authority without limit in matters of faith and ecclesiastical government? Under the circumstances, however, the Pope realized that it would be unwise and exceedingly hazardous to antagonize the movement openly, however deeply he was convinced of the fatal consequences it entailed. The issue was brought into the open under Eugene IV, and the full significance of his struggle with the Council of Basle can be grasped only when we understand the venomous feeling underlying the decree *Frequens* and the subversive potentialities it harbors. In accordance with this decree of Constance, Martin V convoked a general council at Pavia (1423), but its sessions had not yet begun, when in consequence of a plague in that city it was transferred to Siena, where it was opened July 21, 1423. Beyond the issuance of four decrees of minor importance, one of them directed against the Hussites, nothing was done. Utilizing the small attendance as a pretext, the Pope on February 26, 1424, dissolved it, but agreed to assemble a new general council at Basle within seven years.

That the Pope feared trouble of a revolutionary character in the forthcoming council and hoped for something to happen that would thwart its convocation, there can hardly be any doubt. As the year 1431 approached and apparently no preparations had been made in Rome for the assembling of the council, and rumors had it that the Pope was averse to

such a project, the enemies of the traditional form of ecclesiastical government threatened to take matters into their own hands. In the meantime, the Dominican, John of Ragusa, had arrived in Rome to work for the convocation of the council. On February 1, 1431, the Pope issued two bulls, by one of which he appointed Cardinal Giuliano Cesarini president of the council and by the other empowered him, if necessary, to prorogue, dissolve, or transfer it to another city. Martin V died suddenly February 20, 1431, and was succeeded (March 3) by Eugene IV, the conclave being held in the Dominican convent of S. Maria sopra Minerva. The new Pope confirmed the acts of his predecessor, with the reservation, however, that future events might cause him to transfer the council to another city, probably for the sake of Greek reunion. The purpose of the council as outlined in the first session was threefold: the suppression of heresy, the establishment of peace among the nations of Europe, and the reformation of the Church *in capite et membris,* to which must be added the reunion of the Western and Eastern Churches. The heresies that the council had in mind were chiefly those of the Wyclifites and Hussites, who, notwithstanding the condemnation of their errors in the Council of Constance, had since then found many sympathetic supporters in England and Bohemia. In reference to the establishment of peace, it will be recalled that France and England were and had been at war for some years.[1] War raged in northern Italy and between Burgundy and Austria, besides the long struggle of Emperor Sigismund against the Hussites. In the East the Turks threatened the safety not only of the Eastern Empire but of the whole of Europe, so that peace and unity in the West was imperative to check the power and progress of the enemy in the East. That reform was a crying need is very evident. In this respect the Council of Constance had failed miserably. The financial exactions of the Roman curia and its various encroachments on the rights of local authorities, civil and ecclesiastical, had long been causes of bitter complaint. Then in matters of discipline there was the question of clerical concubinage, of simony, of the abuse of ecclesiastical censures, especially of interdict. If Martin V devoted his attention more to the adjustment of temporal affairs than to the reform of the Curia and clergy, this neglect can be easily extenuated when we consider the deplorable condition in which he found Rome and the Papal States on his accession. Unfortunately the Council of Basle, in taking over the task in which Constance had so wretchedly failed, took over also all the elements that had been at the bottom of that failure. It relegated the pope to the background, claimed for itself the *plenitudo potestatis,* and ended even more miserably than did its predecessor.

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[1] It was on May 30, 1431, six months before the formal opening of the council, that Joan of Arc was put to death.

The attendance at the beginning was very small. It increased in 1432, and in 1434 numbered 300 delegates. On the day on which the council was supposed to have opened (March 4, 1431) there was present only one delegate. A month later five more arrived, including three representatives of the University of Paris. These six met (April 11) and declared themselves lawfully constituted to begin the work of the council, the representatives of the university taking it upon themselves to send letters to the cardinals, bishops, and princes urging them to come to Basle. Messengers were sent to Sigismund, who was then in Bohemia, requesting him to use his influence in getting the council under way. On May 31 the Pope wrote to Cesarini, who till then had been engaged in a crusade organized against the Hussites, suggesting that he proceed to Basle for the opening of the council. After conferring with the Emperor, however, he decided to remain with the army, but sent to Basle John of Palomar and John of Ragusa to act as his representatives. These arrived on July 19. On the afternoon of July 23, an assembly was held in the cathedral, at which, after a few preliminaries, was read among other documents the decree *Frequens*. Though there were present less than a dozen members, the assembly arrogantly declared itself a *concilium generale stabilitum et firmatum* and proceeded to act accordingly. The crusade against the Hussites having failed, Cardinal Cesarini arrived at Basle September 9, and a few days later in conformity with papal instructions sent John Beaupère, canon of Besançon, to Rome to inform the Pope of the proceedings. Unfortunately Cesarini selected the wrong man. Whether he was himself unfavorably disposed toward the council and its continuance, or whether he was inspired by such unfavorable dispositions in Rome, he did not scruple, at any rate, to give the Pope a very unfavorable and misleading report of the proceedings of the council and of the situation in general. The attendance, he reported, was very small, with no prospects of an increase in number since all roads leading to Basle were unsafe by reason of the Hussites and the war between Burgundy and Austria. The citizens of Basle, moreover, influenced by the Hussite heresies, were sworn enemies of the Church and the clergy and had already committed acts of cruelty, even murder, against the latter. Acting on this information, or rather misinformation, the Pope (November 12), in a document signed by ten cardinals, authorized his legate at Basle to dissolve the council, should he deem it expedient, and to announce the convocation of another to be held at Bologna eighteen months after the dissolution of the present one. The reasons assigned by the Pope are the report of Beaupère, that the period of seven years prescribed by the decree *Frequens* had already expired, and the desire of the Greeks for a council in an Italian city.

The first formal session of the council was held December 14, 1431, in

the cathedral. Present were three bishops, fourteen abbots, and a considerable number of doctors and clerics of the lower ranks. Four days later the Pope issued a bull dissolving it and convoking another to be held eighteen months later at Bologna. Besides the report of Beaupère, the reasons given were the agreement of Martin V with the Greeks to hold a council in an Italian city and that the invitation extended by the council (October 15) to the Hussites to discuss anew before it articles that had already been condemned by the Councils of Constance and Siena and often by the Apostolic See, constituted an act of disrespect toward the Holy See and the councils. This action of the Pope, though not entirely unexpected by those in touch with the council, created consternation in the ranks of those who had looked to it for useful and much needed reforms. The step went counter to the decrees of Constance, one of which declared that the council could not be dissolved, prorogued, or transferred without its own consent, and marked the beginning of the struggle between the Pope and the council. It is true, neither Martin V nor Eugene IV recognized or could recognize those decrees, yet they constituted the very life of the Council of Basle. The widespread popularity attained by the principles enshrined in them not only frustrated the dissolution but actually created from then on a greater and more profound interest in the council. There is no doubt that eventually it would have become imperative for the Pope to exercise this prerogative, yet under the circumstances it seems unwise to have resorted to it before the council had given good ground for such action. In a warm yet frank and strongly worded protest to the Pope, Cesarini pointed out the evils that would inevitably result from dissolution and appealed to him to revoke the bull. In a second letter to the cardinals he pleaded with them to use their influence with the Pope to change his mind, otherwise *actum est de statu ecclesiastico*. Sigismund chose a middle course; he looked to the council to put an end to the Hussite wars, and to the Pope for the imperial crown. His sympathies, however, were with the former, which he constantly warned against rash and overhasty measures against the Pope. On January 21, 1432, the council in an encyclical to the Christian world announced its decision to remain in Basle and continue the work of reform, at the same time sending a delegation to Rome to secure the withdrawal of the bull. Cesarini resigned as papal legate, and the council elected Bishop Philibert of Coutances to succeed him. In the second public session (February 15, 1432) were renewed the decrees of Constance, that the general council is superior to the pope, that the council has its authority immediately from Christ, that all Christians, even the pope, are bound to obey it, even in matters of faith, and that all, even the pope, who refuse such obedience are to be duly punished. In addition, it was decreed that the Council of Basle could not be dissolved, prorogued, or transferred

without its own consent. An assembly of French clergy at Bourges (February 26) favored the continuation of the council and decided to send representatives. A similar decision was reached by the Bohemian heretics, except the extremists. In a letter of April 7, the Duke of Burgundy informed the council that he would send his own prelates and also use his influence with the King of England to do likewise. All efforts to induce the Pope to withdraw the bull of dissolution having failed, the council in its third session (April 29) formally summoned him and his cardinals to appear before the council within three months or be punished for contumacy.

The harmony that had hitherto existed between the Emperor and the council now became strained. Sigismund wished to remain on good terms with the Pope and the council. Constantly he had urged Eugene to make some concessions to the council. Under the circumstances he would be content with two things, first, that the Pope extend to the council only a partial recognition, that is, entrust to it the adjustment of the Bohemian disorders, and secondly, that the Pope bestow on him the imperial crown. The Pope promised both. In a letter to the Emperor he declared his willingness to let the council continue its discussions on the Hussite controversy, Church reform, and the establishment of peace, provided its decisions be submitted to him for confirmation and provided also that steps be taken for the holding of a general council at Bologna or some other Italian city for the convenience of the Greeks. Eugene demanded from the Emperor an oath that he would abandon the council in case the above provisions were rejected. The plenipotentiaries, whom the Pope had earlier (April 15) promised to send, arrived at Basle August 22. Their task was to restore peace between the Pope and the council. In their addresses they pointed out among other things that the authority of the pope is of divine origin, that the monarchical form of government is the most perfect, having been established by Christ Himself. The pope alone possesses the *plenitudo potestatis*. To him it belongs to convoke a general council and to preside over it, and without his consent such a council is a revolutionary conventicle, headed toward worse abuses. In reply the council maintained the superiority of a general council over the pope in all things that pertain to faith, to the extirpation of schism, and to the reformation of the Church. Only God and a general council are infallible. Many popes have erred. The history of the Church, the writings of the fathers, and the decrees of Constance furnish proof of the superiority of a general council.

In the sixth session (September 6), attended by three cardinals and thirty-two bishops, an attempt was made to declare the Pope and the eighteen cardinals with him at Rome contumacious for having disregarded the summons; this, however, was frustrated by the papal plenipotentiaries and Cesarini's auditor. On October 10, there arrived at Basle two Bohemian del-

egates to prepare the ground for the body of deputies who were to appear later. The council now adopted a new order to transact its business. All members, irrespective of their rank, were divided into four committees, corresponding to the four chief tasks of the council, namely, the *deputatio fidei, pacis, reformationis*, and the *deputatio communis*. On these committees the four nations attending (French, German, Spanish, and Italian) were equally represented, so that each committee consisted of cardinals, bishops, abbots, doctors, parish priests, etc. This promiscuous representation later became a violently disturbing factor in the life of the council and was instrumental in finally running it on the rocks, for it placed the vote of a cardinal or of a bishop on an equal footing with the votes of the inferior clergy, many of whom knew not what it was all about, thus making the votes of the inferior, or so far as the council was concerned, of the irresponsible elements (which constituted the majority) the controlling vote in the council's decisions. Each committee performed its work separately and made known its decisions to the others, and then only was the matter brought before a public session of the council when a virtual unanimity had been obtained among the committees.

In the seventh session (November 6), in which Cesarini probably resumed the presidency, it was decided that in the event of the Pope's death during the council, the cardinals must within sixty days be at Basle for the conclave. Those who failed in this were to be deprived of their revenues. In the eighth session (December 18) the Pope was given another sixty days within which to withdraw the bull of dissolution and to revoke the council summoned to Bologna, under threat of canonical action in case of failure. All collations of bishoprics and benefices by the Pope during this period detrimental to the council are null, and all cardinals, patriarchs, and other clerics at the Roman curia must, twenty days after the expiration of this period, leave the Curia and appear at the council under penalty of forfeiting their revenues. In another decree it was declared that, since there can be only one general council at one time, anyone who convokes another (at Bologna) during this time is *ipso facto* excommunicated, deprived of all offices, and disqualified from holding others.

On January 4, 1433, the Bohemian delegation, consisting of fifteen members and accompanied by a large following, arrived at Basle. Six days later were begun discussions with them, which lasted till April without any result. The subject of these discussions was the four chief points of Hussite teaching, commonly known as the Four Articles of Prague: communion under both kinds; punishment of mortal sins, especially when public, by the civil authorities; free preaching; and the unlawfulness of clerics possessing worldly goods. The deputation left Basle April 14, accompanied by deputies from the council, to continue discussions with the diet as-

sembled at Prague. Negotiations went on with various vicissitudes till July 5, 1436, when the Bohemian delegates at the Diet of Iglau promised obedience to the council. On February 17, 1433, expired the period of sixty days allowed the pope in the eighth session to withdraw the bull of dissolution. On the same day the promoters of the council gathered in the Dominican convent to discuss the Pope's failure and the course of action to be taken. In the tenth session (February 19), attended by five cardinals and forty-six bishops, it was proposed to formally declare the Pope contumacious and to institute canonical action against him. On further consideration, however, it was decided to put the matter off for a time.

While Eugene IV had during all this time resisted the demands of the council to withdraw the bull of dissolution, he had, nevertheless, gradually modified his attitude toward it and manifested a disposition to make some concessions, and would have made more, no doubt, had the attitude of the council been less aggressive. In August, 1432, he suggested instead of Bologna some other city in the Papal States for the holding of the future council, and declared his willingness to resign his sovereign rights over the city selected during the time that the council was in session. Again, on December 14, 1432, he declared that any Italian city would be acceptable to him provided it was not under the jurisdiction of his enemy, the Duke of Milan, and granted the assembly at Basle four months to settle the Bohemian controversy. These proposals being rejected, the Pope in January, 1433, went a step farther and declared he would accept a German city other than Basle, provided this was agreeable to twelve impartial bishops at Basle and the representatives of the different countries. On February 1, he empowered his plenipotentiaries to accept unconditionally any convenient German city in case the compromise was rejected. Urged by Sigismund to take one more conciliatory step, Eugene on February 14 agreed to accept Basle itself provided his legates be allowed to preside. These concessions the council rejected and in the eleventh session (April 27) again proclaimed the superiority of a general council. On May 31 Sigismund received in Rome the imperial crown from the hands of Eugene and at once notified the council of the event, requesting it at the same time to abstain from further measures against the Pope until he himself should arrive. A few days later (June 16) the council again rejected all offers of the Pope and refused to allow his legates to preside. It is an article of faith, it asserted, that the pope is subordinate to a general council, and Eugene is a heathen and a publican when he refuses obedience to the council. In a decree enacted in the twelfth session (July 13) the Pope was allowed another term of sixty days within which to withdraw the bull of dissolution and declare his adherence to the council; failure to comply with this decision within the prescribed period was to entail suspension *ipso facto in spiritu-*

alibus et temporalibus, in which case the papal authority would devolve on the council. The Emperor appealed to Eugene for some further concession, and on August 1 appeared the famous bull *Dudum sacrum*, in which the Pope declared that he was willing and content (*volumus et contentamur*) that the council should be recognized as lawfully constituted from its inception and should continue as if nothing had happened, and that he would co-operate with it to the fullest extent of his power, provided his legates be admitted as presidents with all the powers and jurisdiction that go with that office, and that all the decrees issued against himself and his cardinals be withdrawn. The council, however, was dissatisfied with the wording, *volumus et contentamur*, for it implied mere toleration and not the approbation that it wished, and hence it rejected even this latest concession. It desired those words to be replaced by *decernimus*, a word that the Pope deliberately avoided because it would have meant his approval of all the decrees that had till then been issued against him and against the prerogatives of the Holy See. In the thirteenth session (September 11) the Pope was allowed another term of thirty days to withdraw the bull, and in the fourteenth (November 7) this was extended to ninety days. Toward the end of the year, under pressure of powerful influences in the West and political troubles at home, and relying on the promises of Sigismund and the secular princes that henceforth the papal dignity and the prerogatives of the Holy See would suffer no more insults at Basle, Eugene yielded to the council and on December 15, in a bull accepted the formula *decernimus et declaramus*, withdrew the bull of dissolution, recognized the council as ecumenical from its inception and to be continued as if nothing had happened for the threefold purpose agreed upon in the opening session. The condition insisted upon in earlier declarations, that the council withdraw all the decrees it had enacted against him and his cardinals, is here omitted.[2]

[2] In recognizing the council as lawfully constituted from its beginning, Eugene did not, of course, accept explicitly the thesis of the superiority of a general council. Yet it is quite probable that he gave to it and to other decrees of Constance an apparent implicit recognition, till a more favorable time would permit him to take decisive action against them and against the council. Outright rejection would only have made matters worse, would in all likelihood have brought about another schism. The atmosphere of the time, particularly in Germany and France, was all but saturated with that doctrine. It was preached from the housetops by secular rulers, by cardinals and bishops, and by the literati, clerical as well as secular. Additional luster and vigor were given to it by the appearance just at that time of two works, both of which enjoyed a wide circulation. The first was the *De concordantia catholica* of Nicholas of Cusa. It appeared toward the end of 1433. In the second book he expatiates on the supremely eminent position of the general council in the life of the Church and its superiority over the pope. The author evidently was not then aware of the dangerous implications of his work, for when the council extracted from his writings and other writings of this nature a number of radical but logical conclusions, and then attempted to fasten them on Eugene IV as so many articles of faith, he seems to have divested himself of those ideas, if we correctly judge his

Thus the partisans of the conciliar theory had won a decisive victory, and peace had seemingly been established between Eugene IV and Basle. To those, however, who knew the full implications of the decrees of the fifth session of Constance and recognized the constitution of the Church as unchangeable, that reconciliation was more apparent than real. Instead of acting as a restraint, the victory moved the Basle assembly to greater arrogance. On April 24, 1434, the papal legates were forced to accept the decrees of Constance, which they did, of course, in their own name, and two days later, in the seventeenth session, in the presence of the Emperor, were informed that they might act as presidents of the council, but could exercise no compelling jurisdiction. In the eighteenth session (June 26) the decrees of Constance were again read, but the legates, evidently knowing what was coming, absented themselves. A revolution, fomented by the Pope's enemies, broke out in Rome in May, 1434, and compelled Eugene to flee, disguised in the garb of a monk, to Florence, where he took up his residence in the Dominican convent of S. Maria Novella. One of his first acts here was to inform the council of his flight and the reason therefor.

In the meantime the Basle assembly had, independently of the Pope, kept in communication with the Greeks.[3] In August, 1434, a Greek depu-

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actions after 1437. The other was the *De magna auctoritate episcoporum in generali concilio* (Mansi, XXIX, 512–33) of John of Segovia, one of the chief supporters of the revolutionary faction at the council and one of the ablest defenders of the revolutionary thesis of the superiority of the general council. The work appeared in January, 1434. The author attempts to establish his thesis with a long array of proofs and an almost endless list of texts from the *Corpus Jur. Can.*

[3] Whenever the Eastern Empire was in danger from the Turks, the Byzantines looked to the West for help and made reunion with the Latin Church an inducement to obtain it. Once the union was established and the danger averted, they again hated the union and again cursed the Latins. That is what happened at the Second Council of Lyons (1274) and the story was now to be repeated, though in the present instance the union was not formally repudiated till a year after the fall of the Eastern Empire (1453). In 1360 Adrianople became the residence of the Turkish sultans. This was followed by the seizure of Macedonia, Bulgaria, and Servia. Their objective was Constantinople and everyone knew it. Unless help came from the West and came soon it would be only a matter of a short time when the fair city on the Bosporus would be in the hands of the dreaded invaders. Negotiations with the Latins were begun early in the fifteenth century. In 1418 an embassy from the Emperor and the Patriarch of Constantinople appeared at the Council of Constance. Four years later Pope Martin V sent an envoy to Constantinople to sound out the feeling toward reunion, but four days before his arrival the Turks had abandoned their siege of that city, and so no help was needed and consequently no union was wanted. In March, 1430, the Turks took Thessalonica (now Saloniki) from the Venetians, thus robbing Constantinople of one of its last bulwarks. Emperor John VIII (Palaeologus, 1425–48), realizing that something must be done at once, sent an embassy to Martin V with whom he reached an agreement to the effect that a general council for the purpose of reunion was to be held in an Italian city. This was the reason why Martin V preferred an Italian city to Basle or any other city

tation arrived at Basle with which, however, no agreement could be reached as to where the council for reunion should be held. Another delegation was sent to Constantinople. About the same time the Pope informed the council of his own negotiations with the Greeks, whereby an agreement had been reached that the council for reunion was to be held at Constantinople in the presence of Apostolic legates. Of this agreement the Greek Emperor sent word to the Basle assembly. A new conflict now broke out between the Pope and the council. For some time past complaints began to multiply in various quarters that the council was doing little or nothing in the matter of Church reform. Foremost among these complainants was Sigismund, who had repeatedly urged the council not to waste so much time on private affairs nor to drag before its forum quarrels of a secular nature; to assume a more respectful attitude toward the Pope and to recognize once and for all that the composition of its committees of members of all nations and orders is the cause of its sterility. These committees, he said, ought to be dissolved and arranged along the lines of the procedure of Constance, that is, keep separate the various nations and orders, or the council ought to adopt the method of procedure of the earlier general councils. The council made no change in the composition of its committees, but to meet the other reproaches it enacted in its twentieth session (January 22, 1435) four reform decrees against clerical concubinage, intercourse with those excommunicated, abuse of the interdict, and inordinate appeals. In the next session (June 9) eleven such decrees were enacted, of which the first and most important abolished annates and all the customary papal taxes, thus reducing the papacy practically to a state of bankruptcy. On August 6, papal collectors were commanded under penalty of excommunication to appear at Basle within a specified time to give an account of their receipts. Under the same penalty all outstanding obligations whether to the Pope or to the council were to be paid at Basle. In vain the papal legates protested. Indeed, on the same day was appointed a committee to remind these legates of their duty and to demand from them

outside of Italy, and, if he finally accepted Basle, it was for the sake of peace. This agreement provided that the Emperor and the Patriarch of Constantinople, the three other Oriental patriarchs, and many bishops and persons of high rank in the Empire, altogether about 700 Greeks, were to attend it. The Pope was to provide the ships to bring all these people to the council and afterward take them home; was to pay the expenses of the journey and the expenses also during the time of their stay at the council; and last but not least, he was to send armed vessels for the protection of Constantinople in the meantime. Martin V, owing to his sudden death, could not fulfil this promise, but the matter lay close to the heart of his successor also, and it was for this reason that Eugene preferred an Italian city. Unfortunately there were two powers in the West, each claiming to represent the Latin Church, that wanted to negotiate with the Greeks—Pope Eugene and the Basle assembly. Consistent with their traditions, the Byzantines in the end decided to discard the assembly and carry on their negotiations with the Pope.

a withdrawal of their protests against the declaration that the pope is subordinate to the council and against the abolition of annates and papal taxes, and in case of refusal they were to be excluded from further participation in the business of the council and if necessary to be subject to other penalties. On August 26, two new legates appeared before the assembly and among other things declared that the Pope was disposed to forego annates and other taxes if a suitable compensation were fixed by the council and guaranteed him *pro rata* by each nation. They were told that the Pope should first as an example of obedience accept the decision of the council and then only will consideration of a suitable compensation be in line. It may be mentioned here that there were at the council capable and outstanding bishops and theologians who battled in behalf of the Pope, but their power and influence was unavailing in the face of an overwhelming irresponsible mob. It was not the bishops who made the decisions (their number was comparatively small), but the clerics of the lower ranks and even laymen, who numbered between 500 and 600, each of them having a vote was as good as the vote of a bishop. The twenty-third session (March 25, 1436) was devoted entirely to the reformation of the Curia. Decrees were enacted dealing in detail with the future conclave. The newly elected pope must declare on oath that he will observe the decisions of Constance and Basle, which oath must be renewed annually on the anniversary of his election; in the same decree the pope is instructed at length how to rule the Church. The number of cardinals was limited to twenty-four; these were to aid the pope with their advice and, in the event of its non-acceptance by him, were to report the matter to the next general council. The patience of Eugene in the face of the ever increasing aggressive attitude of the assembly was now exhausted, and he realized that conciliation was out of the question. He therefore addressed (June 1) a memorial to the rulers and princes of Europe in which he summarized the indignities he had suffered at the hands of the Basle assembly, declared that its work thus far had been only of a destructive nature and never would be anything else so long as the irresponsible elements were in control, and requested them to withdraw their delegates from Basle and assist in the preparation of a new council.

The assembly rejected the Pope's agreement with the Greeks, whereby the council of reunion was to be held at Constantinople, and (June 24, 1435) dispatched another embassy to the Byzantine court. The Greeks now insisted that an Italian city must be selected that was acceptable to the Pope, and that the Pope himself must preside in person. On December 6, 1436, the assembly decided that the council of reunion should be held at Basle, or Avignon, or at least in a Savoyan city. This was rejected by the Pope and (February 23, 1437) also by the deputies of the Greek Emperor. The assembly now split into two opposing factions. The minority, which

included the papal legates and most of the bishops, out of regard for the wishes of the Pope and the Greeks, proposed the selection of an Italian city, while the majority, composed mostly of the inferior clergy led by Cardinal d'Allemand of Arles, adhered stubbornly to the selection of Basle, Avignon, or a city of Savoy. The twenty-fifth session (May 7, 1437) was a stormy and disorderly one, so much so that the citizens of Basle found it necessary to station soldiers in the cathedral to prevent physical conflict. From three o'clock in the morning Cardinal d'Allemand was in the cathedral with miter and vestments on to forestall any attempt by some one else to sing the high mass. Both factions read their decrees at the same time, one from the pulpit, the other from some other elevated place in the church. The Pope approved the decision of the minority, and the Greek envoy declared it acceptable to the Emperor. For this Eugene was, in the twenty-sixth session (July 31, 1437), commanded to appear before the council within sixty days to answer for his disobedience. In reply he published the bull *Doctoris gentium* (September 18), in which he warned the assembly to abstain from further attacks on him and on his cardinals and gave it thirty days more to bring the Bohemian controversy to an end. At the same time he gave notice that even in the event that the assembly should mend its ways, the council would be transferred to Ferrara, a city acceptable to the Greeks. In its twenty-eighth session (October 1) the Pope was declared contumacious, and in the following one (October 12) the superiority of a general council was again proclaimed; Eugene was warned that if, within four months, he did not make his submission, he would be *ipso facto* suspended and, should he continue so for two months more, steps would be taken to bring about his deposition; at the same time the bull *Doctoris gentium* was declared null and void. By a decree of December 30, 1437 or January 1, 1438, the Pope transferred the council to Ferrara. After the failure of one more effort to bring the assembly to its senses, Cesarini with all the cardinals except d'Allemand and with most of the bishops left Basle and joined the Pope at Ferrara. What remained at Basle now became a body of schismatics.[4]

At Ferrara the council opened January 8, 1438, and two days later held its first session, Cardinal Albergati presiding in the absence of the Pope, who arrived January 27. All future decrees of Basle were declared null and void. The methods of voting by nations, as at Constance, and by committees, as at Basle, were discarded, and the members were divided into three classes: (1) the cardinals, archbishops, and bishops; (2) the abbots and prelates; and (3) doctors of theology and canon law, etc. A two-thirds majority was required in each class to make its vote effective. The

[4] Emperor Sigismund died December 9, 1437. His successor was Albrecht II, who after a reign of one year was succeeded by Frederick III.

second session was held February 15. It was presided over by the Pope and attended by seventy-two bishops, a large body of priests, doctors of theology, and others. In it the members of the Basle assembly were excommunicated. In July, 1437, Eugene hired a fleet of ships in Venice and sent them to Constantinople to bring the Emperor and his bishops to Ferrara. It reached the Eastern capital in September and, while it was waiting there, another fleet arrived (October 3), sent by the Basle assembly to take the Byzantines to Avignon. This so provoked the captain of the Pope's fleet that he was with difficulty restrained from sailing out to fight the fleet of the assembly. However, the Greeks realized that if there was to be a reunion it must be brought about by co-operation with the Pope and a general council in an Italian city; so they turned their backs on Basle and its fleet. They arrived at Venice February 8, 1438, and on March 4 entered Ferrara. Besides the Emperor, the party included Patriarch Joseph II (1416–39), many bishops, priests, and lay officials, altogether about 700 persons. The patriarchs of Alexandria, Antioch, and Jerusalem sent legates. Preliminary conferences began April 9. From the beginning the Byzantines manifested a desire to have the chief points of difference between them and the Latins regarded as a *noli me tangere*. These points were four: the procession of the Holy Ghost, azyme bread at mass, purgatory and the primacy, to which might be added the *Epiklesis*.[5] The Emperor's purpose was to effect a general union with the Latins without any concessions on the part of the Byzantines in matters of doctrine. But, while their coming was dictated first and foremost by political needs, some members in the party sincerely hoped and prayed for a permanent union.[6] After six months

[5] *Epiklesis* is the name of an invocation or prayer that occurs in all Eastern liturgies after the words of consecration in the mass. Originally it formed a part of the Western liturgies also. Even today we have in our missal in the prayer *Supplices te rogamus* a remnant of an Epiklesis or old Latin invocation which, being only a remnant, is hardly recognizable as one (Duchesne, *Christian Worship, its Origin and Evolution*, p. 181). The difference between the Latins and the Greeks on this point arises from the answer to the question: at what precise moment in the mass does the change of bread and wine into the body and blood of Christ take place? The Greek theologians at the Council of Florence maintained the change takes place, not at the words of institution, "This is my body" and "This is the chalice of my blood," as the Latins claim, but at the moment, and at that moment only, when the prayer of invocation, the Epiklesis, is said. According to the Greeks both elements, the words of institution and the Epiklesis, are essential, but transubstantiation does not take place till the latter is pronounced, and they tell us that the *Supplices te rogamus* in the Latin missal is a true Epiklesis, having the same effect as their own. Jugie, *Theologia dogmatica christianorum orientalium*, III (Paris, 1930), 256–93; Lingens, "Die eucharistische Consecrationsform," in *Zeitschr. f. kath. Theologie*, XXI (1897), 51–106; art. "Epiklesis" in *Cath. Encyclopedia*.

[6] Outstanding members of the Byzantine party who labored untiringly for reunion and were largely instrumental in bringing it about, were Johannes Bessarion and Isidore of Kiev or Moscow, metropolitans of Nicaea and Kiev respectively. In 1439 both were created cardinals. Bessarion changed to the Latin rite and took up

of idle excuses, Eugene gave the Greeks to understand that the time had come for public discussion of the subject of reunion, and he set October 8, 1438, for the first session of the council of reunion (the third in the series of Ferrara). From the beginning the question of the *Filioque* was constantly before the council, and for nearly a year (fifteen sessions), the entire time that the council sat at Ferrara, nothing was accomplished, chiefly because the Emperor and Marcus Eugenicus, a bitter enemy of compromise or union with what he called the Latin heretics, did not wish to reach an agreement in matters of doctrine.[7] Owing to the outbreak of

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his residence in Rome. He was one of the most learned men of his age and became a leader in the Renaissance movement. Well versed in Greek and Latin, a tireless collector of Greek manuscripts, he was one of the first to acquaint the Western world with the forgotten Greek classics. Isidore, who is not to be identified with Isidore of Thessalonica, returned to Kiev and announced the union, was arrested and deposed; he turned to Rome and was sent by Nicholas V as legate to Constantinople. He witnessed the fall of the city (1453) and escaped death only by dressing a corpse in his cardinal's robe. While the Turks were beheading the lifeless body, Isidore was on his way to Asia Minor disguised as a slave. On his return to Rome he was made bishop of Sabina, having presumably adopted the Latin rite. Another interesting figure in the negotiations for reunion was Patriarch Joseph II of Constantinople. He was in favor of reunion but did not live to see it accomplished. He died June 10, 1439, while the council was still in session, having before his death accepted the union in writing. He was buried in Florence in the Dominican church of S. Maria Novella. There he still lies, far removed from his beloved patriarchal city. On the side of the Latins, the two leaders in these discussions with the Greeks, as also in the earlier discussions with the Bohemians, were the Pope's former legate to Basle, Cardinal Cesarini, and the Dominican theologian, John Torquemada.

[7] Not only on the point of doctrine but also in the matter of precedence and ceremonial etiquette in general was the question of reunion retarded and complicated. In this connection it may be said that the more the imperial power of the Byzantines waned the higher rose their pride, and at no period of their history do their arrogance and conceit stand out in bolder relief, than when they stood like beggars on Western soil pleading for help against the dreaded Turk, whom, when he became their master, they loved more, in spite of his cruel oppressions, than they loved their fellow-Christians of the West who had done so much for them. Even now when their Empire stood on the verge of complete disaster, almost forgotten by the Western world, a poor Greek king entered Ferrara at the head of a sumptuously bedecked retinue claiming recognition from the Western barbarians as the successor of Julius Caesar. While still aboard ship the Patriarch was much perturbed about the greeting to be extended to the Pope. At Venice he remarked that, if the Pope is older than he is, he will honor him as a father, if he is the same age he will treat him as a brother, if younger, as a son. To kiss the Pope's foot; he would rather return home than humiliate himself to that extent. And so the Pope agreed to kiss the Patriarch's cheek. This settled, another difficulty arose. The Greeks insisted that the Emperor be given the first and highest place in the council and that a subordinate position be assigned to the Pope. Here we have almost unbelievable extremes, beggars insisting on the most extravagant deference. After much unpleasant discussion, it was agreed that the Latins should sit on the Gospel side of the cathedral with the Pope at their head on a throne elevated above all other seats, while the Greeks should sit on the Epistle side with the Emperor at their head and next to him the Patriarch. On one occasion the Emperor became very indignant and almost left the council, because the representative of the Duke of Burgundy disdained to do him homage. So throughout the entire

the pest in Ferrara and also to financial straits (for the Pope was paying all the expenses of the Emperor and his 700 followers, and the Florentines had offered to lend him large sums of money if the council were removed to their city), Eugene in the sixteenth and last session (January, 1439), by a bull which was read in Latin and Greek, transferred the council to Florence. The seventeenth session (the first of Florence) was held February 26, 1439, in the papal palace. For nine consecutive sessions the *Filioque* was again the subject of deliberation. The Greeks, feeling that further public discussions would be useless and that some other way must be found to bring about the desired result, requested the Pope to end the public sessions of the council, which terminated therefore with the twenty-fifth session (March 24). Conference after conference among themselves and with the Latins proved fruitless. The good work of those sincerely in favor of reunion was invariably brought to nought by those opposed to it. Marcus Eugenicus of Ephesus, for example, declared the Latins heretics, with whom union was impossible unless they first removed the *Filioque* from their Creed. When at last reunion seemed assured, Eugene at the request of the Emperor renewed his promise to the Byzantines of the financial and military aid of the Holy See against the Turks as a condition of reconciliation, and (June 8) the Greeks accepted the procession of the Holy Ghost from the Father and the Son as from one principle. A few weeks later they accepted also the azymes and purgatory. In regard to the primacy, which like the *Filioque* was also a stumblingblock, after much wrangling they conceded to the Pope all the rights and privileges that he enjoyed before the schism. An agreement was reached also in respect to the *Epiklesis*, the form of consecration in the mass. On July 6, the famous bull *Laetentur coeli* was solemnly published in the cathedral, announcing the reunion of the Western and Eastern Churches.[8] After the departure of the Greeks, the Latins remained in Florence to bring about reunion also with the other Eastern Churches. The Armenians, who had already for a long time been negotiating with Rome, renounced Monophysitism and accepted the *Filioque*, the decision of Chalcedon regarding the two natures in Christ, and that of the Sixth General Council respecting the two wills in Christ. On November 22 of the same year, Eugene IV published his *Decretum pro Armenis*, well known for its teaching regarding the sacrament of holy orders.[9] This was followed February 4, 1442, by his *Decretum pro Jacobitis* for the Jacobites

council the Greeks grumbled and sulked, and more than once threatened to go home if they were not treated properly, though it was they who had everything to gain.

[8] The Latin and Greek text of the bull is given by Hefele, German ed., VII, 746-53; French, VII, 1037-43. Denzinger, nos. 691-94.

[9] Denzinger, nos. 695-702.

of Syria.[10] On April 26, 1442, the Pope transferred the council to Rome, where it was continued in the Lateran Palace. Here reunion was effected with the Bosnians, the Syrians of Mesopotamia, the Chaldeans or Nestorians, and the Maronites of Cyprus. The second session in the Lateran Palace was held August 7, 1445, and with it the Council of Florence came to an end.

In the meantime the schismatical assembly at Basle, though composed of only one cardinal (d'Allemand), a few bishops, ambassadors, and the veritable army of inferior clergy, carried on as if it were a lawfully constituted general council. When Eugene transferred the council to Ferrara, the loyalty of practically the entire Christian world went with him. In its thirty-fourth session (June 25, 1439), at a time when Eugene was spending his best efforts to bring about reunion, Cardinal d'Allemand, against the wishes of most of the bishops and ambassadors present, formally deposed him as a heretic and schismatic, and to crown its infamy the assembly (October 30) elected as his successor Amadeus, former duke of Savoy, who took the name of Felix V. This election, in which one cardinal, eleven bishops, seven abbots, five theologians, and nine doctors of law took part, turned the world against Basle. Quarrels between Felix V and the assembly broke out and, in December, 1442, he left Basle and took up his residence at Lausanne. The assembly held its forty-fifth and last session at Basle May 16, 1443, and in it decreed that the next general council be held at Lyons in 1446 and that in the meantime the Basle assembly should continue its work. Should the city of Basle become unsafe, then the assembly was to be transferred to Lausanne. On February 17, 1448, the Vienna Concordat was concluded between Emperor Frederick III and Pope Nicholas V, the successor of Eugene IV. The latter had died February 23, 1447. This concordat defined the pope's rights in the collation of benefices and specified the sources of revenue to take the place of the abolished annates and other papal taxes. This agreement spelled the doom of the rebellious Basle assembly, for the Emperor could now no longer permit its existence in the city of Basle. And so in June, 1448, accompanied by 500 armed men, the members retired to Lausanne. Here in the second session (April 7, 1449) Felix V resigned and made his submission to Nicholas V. In the fourth session (April 19), on the fictitious assumption that the Holy See was vacant, the assembly elected Thomas of Sarzano, cardinal and bishop of Bologna (who also took the name Nicholas V), made its submission to him, and exhorted all the faithful to recognize him as the true pope. One more session was held (April 25, 1449), which brought the Council of Basle to a close.

[10] Denzinger, nos. 703-15.

Whether Basle can be called an ecumenical council and to what extent it may be so considered, are questions on which scholars are not agreed. The extreme Gallican school contends that it should be recognized as ecumenical in its entirety (1431–49). This view is, of course, extravagant and cannot be accepted. Bellarmine, Roncaglia, and a few others do not recognize it or any part of it as ecumenical, because of the small attendance in the beginning and the assembly's defiant and rebellious attitude toward the pope subsequent to its dissolution. How this opinion can be maintained in the face of Eugene's declaration in the bull *Dudum sacrum* of December 15, 1433, that the Council of Basle is a general council,[11] and of his statement in a letter (July 22, 1446) to his legates that he recognizes and honors Basle as a general council in its first twenty-five sessions,[12] is not clear. The true opinion seems to be that the council is ecumenical in its first twenty-five sessions, that is, until its removal to Ferrara, and this ecumenicity covers not all the decrees enacted in those sessions, as the moderate writers of the Gallican school would have us believe, but only those that were enacted in fulfilment of the council's purposes (extirpation of heresy, establishment of peace, and reformation of the Church) and are not prejudicial to the authority of the Apostolic See. There has never been any question regarding the ecumenical character of the Council of Ferrara-Florence. Florence was the continuation of Ferrara, just as Ferrara was the continuation of Basle.[13]

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[11] Mansi, XXIX, 78 f.

[12] Raynaldus, *Continuatio annal. Baronii ad an. 1446*, 3.

[13] *Sources:* Mansi, *Conciliorum coll. ampliss.*, XXIX–XXXI; Hardouin, *Conciliorum coll.*, VIII–IX; *Concilium Basileense. Studien u. Quellen zur Gesch. d. Konzils v. Basel*, von Haller, Herre, Beckmann u. a., 7 vols., Basel, 1896–1927; *Deutsche Reichstagsakten*, VII–XI. *Literature:* Hefele-Leclercq, *Hist. des conciles*, VII, 663–1147; Hergenröther, *Handbuch d. allg. Kirchengeschichte*, III, 196–252; Valois, *La crise religieuse du XV^e siècle. Le pape et le concile (1418–50)*, Paris, 1909; Haller, "Die Protokolle d. Konzils v. Basel," in *Hist. Zeitschr.*, LXXIV (1895), 385–406; *id.*, "Beiträge zur Gesch. d. Konzil v. Basil," in *Zeitschr. f. d. Gesch. d. Oberrheins*, XVI (1901), 9 ff. and 207 ff.; Lazarus, "Das Basler Konzil. Seine Vorbereitung u. Leitung, Gliederung u. Behördenorganisation," in *Hist. Studien*, C (1912); Pastor, *History of the Popes*, I–II; Bursche, *Die Reformarbeiten d. Basler Konzils*, Lodz, 1921; Eckstein, *Zur Finanzlage Felix' V u. des Basler Konzils*, Berlin, 1912; Valois, *Histoire de la Pragmatique Sanction de Bourges*, Paris, 1907; Manger, *Die Wahl Amadeus v. Savoyen zum Papste durch das Basler Konzil*, Marburg, 1901; Frommann, *Kritische Beiträge zur Gesch. d. Florentiner Kircheneinigung*, Halle, 1872; Pierling, *La Russie et le Saint Siège. Études diplomatiques, I: Les Russes au concile de Florence*, Paris, 1902; Auner, *La Moldavie au concile de Florence*, Paris, 1904; Seppelt, "Das Papsttum u. Byzanz," in *Kirchengeschl. Abbandl.* (hg. v. Sdralek), II, 1904; Norden, *Das Papsttum u. Byzanz* (Berlin, 1903), pp. 694–741; "Amédée VIII de Savoie," in *Dict. d'hist. et de géographie ecclés.*, II, 1166–74; Pérouse, *Le cardinal Louis Aleman, président du concile de Bâle et la fin du grand schisme*, Paris, 1904; Rocholl, *Bessarion, Studie zur Gesch. der Renaissance*, Leipzig, 1904. For further literature, cf. Hergenröther, *op. cit.*, and Funk-Bihlmeyer, *Kirchengeschichte*, II, 285–89.

Of the following decrees, the first four were issued by the council in the twentieth session, the remainder in the twenty-first.

I

Every cleric, whatever may be his status, condition, order, or dignity, who two months after the publication of the present constitution in the cathedral churches is still a notorious *concubinarius*, shall be deprived for a period of three months of the revenues of all his benefices, which his superior shall return or apply to the churches from which they were derived. Moreover, the superior, as soon as he becomes aware of the transgression, shall warn every *concubinarius* to dismiss the concubine *infra brevissimum terminum*. If the *concubinarius* fails to do so or, having done so, takes her back or takes another, this holy council commands that he be deprived of all his benefices. But even when he has dismissed her, he shall be unqualified to receive ecclesiastical revenues, honors, benefices, or appointments of any kind until he has given his bishop or superior satisfactory proof of amendment. Should he again become a transgressor in this matter, he shall be forever disqualified from receiving honors, benefices, or appointments of any description whatsoever. But, if those whose duty it is to correct such persons neglect to do so, then they themselves are to be punished by their superiors. Let provincial synods also proceed against those who prove negligent in this respect, even to the extent of depriving them of the right to confer benefices. Those whom synods or superiors have found guilty of concubinage, but who, being exempt, can be punished only by the supreme pontiff, shall be denounced to the pontiff at once by said superiors and synods and a copy of the process placed in his hands. In all general and provincial chapters special vigilance shall be exercised in regard to their own, and all punitive statutes in this matter against notorious and non-notorious *concubinarii* are to remain in force. A public or notorious *concubinarius* is not only one whose crime is well known in consequence of a penalty imposed or of a confession in a court of justice or through evidence which by no method of tergiversation can be concealed, but also he who keeps a woman suspected of loose morals and who though admonished by his superior does not dismiss her. But since in some localities there are ecclesiastical superiors who permit *concubinarii* to continue in their crime in return for a monetary consideration, we command them under penalty of eternal malediction that they do not in the future by agreement or in view of gain tolerate, connive at, or in any way be in collusion with such transgressions; otherwise in addition to the aforesaid penalty for negligence they shall be compelled to give to charity and pious purposes double the amount of what they have received from sordid sources. All concubines and suspicious

women shall be removed by the prelates from the residences of the clergy, even with the aid of the secular authorities if necessary, and it shall not be tolerated that the children thus born in concubinage live with their fathers. This council decrees, moreover, that the present constitution be published in provincial and diocesan synods and in general and provincial chapters, and that superiors warn their subjects to put away their concubines. Furthermore, this council appeals to the secular and royal authorities, under no pretext to place obstacles in the way of the prelates who in virtue of their office undertake to eradicate this abuse. And since fornication is a crime prohibited by the divine law and must be avoided under pain of mortal sin, this council warns all laymen, married as well as unmarried, to abstain from the crime of concubinal intercourse. It is reprehensible that he who has a wife should betake himself to another woman; if he, however, who is unmarried cannot restrain himself, let him in accordance with the counsel of the Apostle take a wife (I Cor. 7: 8, 9). Let those, therefore, upon whom it devolves strive sedulously to bring about by salutary admonitions and other canonical measures the observance of this divine precept.

2

To avoid scandals and numerous dangers and likewise to relieve timorous consciences, it is decreed that henceforth no one is bound to abstain from communicating with another in the administration and reception of the sacraments, or in other matters sacred or profane, under pretext of any ecclesiastical sentence or censure, whether promulgated in general form *ab homine vel a jure,* or to avoid anyone, or observe an ecclesiastical interdict, except when such sentence or censure shall have been published or made known by the judge in a special and express form against some certain specified person, college, university, church, or locality, or when the fact that some person has incurred the sentence of excommunication is so notoriously evident that by no manner of tergiversation can it be concealed or by law (*juris suffragio*) excused. Communication with such is forbidden by the canons. This concession, however, is not intended to favor those excommunicated, suspended, or affected by an interdict.[14]

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[14] This decree restricted unlawful intercourse with those excommunicated to that held with persons whose sentence was brought to the knowledge of the public by the judge in a special and explicit notification, naming the person thus censured, and with those whose excommunication was so notoriously evident that it could in no manner be concealed or excused. With all other excommunicated persons, though the fact of their excommunication was known, intercourse was not forbidden. The former were known as *vitandi,* the latter as *tolerati.* This distinction dates from the constitution *Ad evitanda scandala,* published by Martin V at the Council of Constance in 1418. Till then intercourse had been forbidden with all the excommunicated,

3

Since from the indiscreet and arbitrary imposition of interdicts in the past many scandals have arisen, this council decrees that no city, town, castle, or locality shall be placed under ecclesiastical interdict, unless the cause for such action is supplied by the places themselves or by the authorities thereof. On account of the offense or transgression of any private person such places shall not be interdicted by any ordinary or delegated authority whatsoever, unless a person has been excommunicated and formally published or made known as such in the church, and the officials, despite judicial requisition, have not within a period of two days ejected him or compelled him to make satisfaction. If after two days he has been ejected or has made satisfaction, divine services may immediately be resumed. This holds good also in case of doubt.

4

That processes or actions at law may be the more speedily terminated, a second appeal is hereby forbidden if it is question of the same complaint or if appeal is taken from the same interlocutory sentence when that sentence has not the force of a final judgment. He who appeals frivolously or unjustly before the final decision is rendered shall, in addition to the expenses of the trial, be condemned by the appellate judge to pay to the party appealed against the sum of fifteen florins in gold.

5

In the name of the Holy Spirit this council decrees that in the future, whether in the Roman curia or elsewhere, for the confirmation of elections, for the granting of postulations, for provisions, collations, presentations, institutions, installations, and

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once they were known as such, and the penalty for such unlawful intercourse was minor excommunication. The large number of excommunications, through abuse of the censure on the part of the authorities, gave rise to much scandal and many inconveniences, to remove which Martin V in the above constitution restricted unlawful intercourse to that held with the two classes of persons indicated above.

The *Ad evitanda scandala* (Hefele-Leclercq, VII, 548) is not a decree that was issued by Martin *sacro approbante concilio*. It was in the first place an indult granted by him to the German nation and became part of the Concordat concluded between the Holy See and that nation. In granting this indult, however, the Pope wished that it should continue in force not for five years, as the other provisions of the Concordat, but always. He wished, moreover, that it should extend not to the German nation only, but to all the faithful (*omnibus Christi fidelibus*), and since special copies could be obtained of each provision of the Concordat, this one, because it extended to all the faithful and hence many copies of it were in circulation, came to be known as a bull or constitution. Hefele-Leclercq, VII, 540, note 2.

investitures, whether it be question of episcopal or metropolitan churches, of monasteries, dignities, benefices, or any ecclesiastical office whatsoever, also for the conferring of holy orders, the *benedictio,* and the pallium, no payment shall be demanded either before or after under the pretext of custom, privilege, statute, or any other reason, directly or indirectly, be it for affixing the seal to bulls, payment under the name of annates, *minuta servitia, primi fructus* or anything else no matter under what title, color, or name it may pass. Only the writers in the chancery office, the abbreviators and registrars, shall receive a suitable compensation for their work. Whoever presumes to demand, give, or promise anything in contravention of this decree, shall incur the same penalty that is imposed on simoniacs, and to the benefices and the like that they have thus obtained they have no right or title. All obligations and promises made, as well as all censures and commands imposed, that are at variance with or contrary to this most salutary decree are null and void. And if (which God forbid) the Roman pontiff, whose duty it is to enforce and guard the canons of the general councils, should act in contravention of this decree and scandalize the Church, let him be denounced to the general council. All others shall, according to the degree of their guilt and in accordance with the canonical prescriptions, be duly punished by their superiors.

6

Whoever, having a colored title, has for three years been in the undisputed possession of a benefice or will in the future be in such possession, may not after that term be molested in his claim or possession by anyone, even in case of the enactment of a new law. Only when anyone through war or other legitimate impediment was prevented during that period from asserting his claim to the benefice, may he in accordance with the Council of Vienne even at the end of three years make known that claim. This, of course, refers to future controversies. The bishops, however, shall make inquiries whether anyone is in possession of a benefice without a title. If so, they shall bestow the benefice on the incumbent or, in case he was intruded or is otherwise unworthy, confer it on another suitable person.

7

This holy council decrees that in all cathedral and collegiate churches the hours, preceded by a suitable signal, shall be chanted reverently by all, not cursorily and hastily but calmly and slowly and with the proper pauses, especially in the middle of the verses of the psalms, and by the observance of the difference between the solemn

and ferial offices. Those who recite the canonical hours shall enter the church wearing tunics extending to the ankles and clean surplices reaching beyond the middle of the tibiae or shin bones, or cloaks, according to the diversity of seasons or climates, with amices or birettas on their heads. While in choir let them conduct themselves with such dignity as the place and occasion require; not carrying on conversations or reading matter that is foreign to the divine office. And, since they are gathered to chant the divine praises, let not the lips be closed but let all chant with a cheerful willingness and devotion. When they say *Gloria Patri et Filio et Spiritui sancto,* let all rise, and, whenever the name of Jesus is pronounced, let all incline the head. While the hours are being said in common, let no one in the choir say or read them privately, for that not only exhibits a want of respect but is also a source of distraction to others. The dean or whoever is in charge shall exercise proper vigilance that these and other things pertaining to the recitation of the divine office and to the discipline of the choir be duly observed. Transgressors shall be punished according to the degree of their guilt.

8

Whosoever is not present at matins before the end of the psalm *Venite exultemus,* at the other hours before the end of the first psalm, at mass before the end of the last *Kyrie eleison,* to the end of the divine office, except in case of necessity and then with permission sought and obtained, is considered to have been absent from that hour, *salvis ecclesiarum consuetudinibus.* The same applies to those who do not remain from the beginning to the end of processions. For the enforcement of this provision let some responsible person, who will note delinquencies and spare no one, be appointed and bound by oath to perform his duties faithfully. This council decrees, moreover, that in those churches in which no stipend is assigned for each of the hours, a deduction be made from the gross revenues of the delinquents, so that their reward be in proportion to their labors, thus destroying that abuse by which anyone present at only one hour receives the stipend of a whole day. The same shall apply to deans and other officials.

9

With regard to those who say the divine office privately, that is, outside the choir, this holy council admonishes all who are constituted in sacred orders, since they are bound to the canonical hours, that, if they wish their prayers to be acceptable to God, they do not mumble them, abbreviate or mutilate words or intermingle them with laughter; but whether alone or together let them recite

the hours, whether during the day or night, reverently and distinctly and in a place where they will not be distracted in their devotions; for which, moreover, they ought to prepare themselves in accordance with the inspired word: "Before prayer prepare thy soul, and be not as a man that tempteth God." [15]

10

Everyone holding an ecclesiastical benefice, especially of the major class, who during the time of the divine offices wanders around either inside or outside the church or carries on a conversation with others, shall lose *ipso facto* the revenues not only of that hour but of the entire day. If after one correction he does not amend his ways, he shall lose them for a month, and for repetitions of the offense he shall be subjected to severer penalties. Neither is it to be tolerated that the divine offices be disturbed by the noisy wandering around of others. The canons who offend in the aforesaid matter shall be duly punished by their superiors.

11

That all things may proceed with order in the house of God and that everyone may know what he has to do, it is decreed that a tablet be hung in the choir, and thereon shall be written the ecclesiastical functions of each one of the canons for the entire week, what he has to read, sing, and the like. He who neglects *per se vel alium* to attend to the function assigned to him on the tablet, shall lose for each hour the revenues of one day.

12

The abuses now existing in some churches whereby the *Credo*, which is the symbol and profession of our faith, is not sung in its entirety, or the Preface or the *Pater noster* is omitted, or worldly songs or ballads are sung, or masses are said without a server or are said throughout in so low a voice that the celebrant cannot be heard by those attending them, are hereby abolished, and it is decreed that those found guilty of such violations in the future, be duly penalized by their superiors.

13

That abuse also, so manifestly incongruous with divine worship, by which some canons contract debts with the agreement that they will satisfy their creditors at a specified time or absent themselves from the divine offices, is hereby abolished, and every obligation so

[15] Ecclus. 18:23.

contracted, even if confirmed under oath, is declared null, and it is decreed that anyone who in the future makes such an illicit contract shall *ipso facto* lose three months' revenue, which shall be applied to the church. Moreover, he shall receive no revenues from the church so long as he absents himself from the divine offices.

14

The council forbids that a chapter of the canons be held during the time of the celebration of a *missa major,* especially on solemn festival days, unless the matter is urgent. He who for no urgent reason assembles a chapter at that hour shall be suspended for a week from *distributiones quotidianae*, nor shall the canons themselves receive of the distributions for that hour.

15

In some churches during certain celebrations of the year there are carried on scandalous practices, to the effect that some don pontifical vestments and miter and, with crosier in hand, attempt to bestow the blessing after the manner of bishops; others clothed like kings and dukes celebrate the feast of fools and of children; others again resort to crude theatrical performances, to buffoonery, dancing, and banqueting; and then there are the annual fairs or markets. These abuses are hereby abolished, and this holy council decrees and commands the bishops as well as deans and rectors of the churches, under penalty of being deprived of all ecclesiastical revenues for a period of three months, that they do not in the future tolerate such disgraceful conduct in the churches or in cemeteries and that they punish the transgressors with ecclesiastical censure or other legal measures. All customs, privileges, and statutes that in these matters are not in harmony with these decrees are null and void, unless perchance they provide severer penalties.

THE EIGHTEENTH GENERAL COUNCIL (1512–17)

FIFTH LATERAN COUNCIL

History. In a pre-election agreement among the cardinals in conclave, Pope Julius II promised under oath that he would within two years convoke a general council. Year after year passed, however, and the promise remained unfulfilled. Urged on by Emperor Maximilian I and especially by Louis XII of France, five cardinals, dissatisfied and displeased with the Pope's anti-French policy, convoked (May 16, 1511) a schismatical council at Pisa, setting September 1, 1511, as the day for its opening. The Pope was petitioned to give his consent to this convocation and to attend the council either *per se vel per alios*. In the meantime he was not to appoint any new cardinals, was not to take any action against the prelates who should attend the council or place any obstacles in its way; all such acts were declared null and void. To frustrate the designs of this assembly, Julius, on July 18, 1511, by the bull *Sacrosanctae Romanae ecclesiae*,[1] convoked the Fifth Council of the Lateran and fixed April 19, 1512, as the date for its opening. Ten days later he addressed an admonition to Cardinals Carvajal, Briconnet, and Borgia, the leaders of the opposition, demanding the withdrawal within fifty days of the convocation of their schismatical council under penalty of deprivation of their dignities and offices. This was followed (October 24) by their excommunication and deprivation of their cardinalitial dignity. Later, France (except Brittany) was placed under interdict, and additional penalties were imposed on the city of Lyons for giving refuge to the pseudo-assembly. Notwithstanding these measures, the council held its first session November 5, 1511. There were altogether ten sessions. Owing to the fact that it was not welcome in Pisa or anywhere else, it had a rather shifting career. The attendance was small throughout, a few cardinals and a few French bishops and abbots, with the ambassadors of the French King. The first three sessions were held at Pisa; the five following ones at Milan. In the last of these the Pope was suspended from all spiritual and temporal administration and threatened with further penalties if he continued his disobedience toward the assembly. In consequence of this action, the assembly was compelled to leave Milan. Its ninth session was held at Asti in Piedmont, and the last one at Lyons (July 6, 1512).[2]

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[1] Hardouin, *Conciliorum coll.*, IX, 1584–93.

[2] From the beginning this pseudo-council was nothing but a plot hatched by French politics to harass the pope in his efforts to deliver Italy from French rule. In substance

The French victory at Ravenna (April 11, 1512) and the subsequent seizure of other Italian cities by Louis XII, rendered it impossible for many bishops to be in Rome in time for the opening of the council. The Pope, therefore, by the bull *Inscrutabilis*[3] of April 17 prorogued it to May 1, and on April 29, by the bull *Romanus Pontifex*,[4] to May 3. In the meantime a committee of eight cardinals had been appointed to make all necessary preparations. On May 2, the Pope, accompanied by sixteen cardinals, eighty prelates, and a large military escort, went to the Lateran Palace. The following morning he entered the basilica amid the cheers of 50,000 people. The purpose of the council as expressed in the bull of convocation was fivefold: to condemn certain heretical theories, to extirpate the newly-born schism, that is, the pseudo-council of Pisa, to promote the reformation of clergy and laity, to promote peace among Christian princes, and to consider ways and means of organizing a war against the Turks. Decrees were enacted dealing with all these five points. Owing to the long duration of the council, the attendance varied much, ranging from 100 to 150, mostly Italians. The first public session was held May 10, 1512. Present were fifteen cardinals, the Latin patriarchs of Alexandria and Antioch, sixteen archbishops, fifty-six bishops, some abbots and generals of religious orders, ambassadors from Spain, Venice, and Florence, and a number of doctors of theology and canon law. It was devoted entirely to preliminaries. In the third session (December 3) Matthew Lang bishop of Gurk and envoy of Maximilian, who had been the representative of the Emperor at the assembly of Tours (1510),[5] read an act by which the Emperor repudiated all that had been done at the conventicles of Tours and Pisa and declared his adherence to the Lateran Council. At this time France was placed under interdict. In the fourth session (December 10), the secretary of the council at the request of the Pope read the letter of Louis XI of France to Pope Pius II (1458–64) regarding the repeal of the Pragmatic Sanction of Bourges (1438), which the latter had declared an infringement of the rights of the Holy See and which the former had promised to revoke.[6] The council's advocate demanded the abolition of

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and in form it was a poor imitation of the rebellious Basle assembly. With the final success of the papal forces in driving the French beyond the Alps, it died a natural death. Its greatest literary opponent was the Dominican theologian and cardinal, Thomas de Vio Cajetan.

[3] Hardouin, IX, 1595–96.

[4] *Ibid.*, pp. 1596–98.

[5] An assembly of French bishops convoked by Louis XII and presided over by the Archbishop of Lyons, François de Rohan. Louis attended in person but forbade the papal representatives to follow him there. Its purpose was to consider and adopt disciplinary measures against the Pope. In it was conceived the pseudo-assembly of Pisa. Hefele-Leclercq, VIII, 276 f.

[6] In the conflict between Eugene IV and the Council of Basle, France, though recognizing the Pope, endeavored to remain neutral. The council, before its suspension

this edict and proposed that the prelates, chapters, princes, and presidents of parliaments of France be cited to appear before the council to justify their opposition. The Pope approved the proposal and appointed a commission before which the French were to defend their position, at the same time fixing the term within which to appear at sixty days. The subject was continued in the fifth session (February 16, 1513). Owing to the illness of the Pope, Cardinal Raphael of Ostia presided. In this session was published the bull *Si summus rerum opifex*,[7] against simony in papal elections, declaring such elections invalid and the one so elected an apostate, deprived of the cardinalitial and all other dignities. All censures imposed by him are null, and the cardinals untainted by such misconduct may invoke the secular power against him. Electors guilty of simony are deprived of all offices and dignities if they do not repudiate the one so elected and unite with the other cardinals within eight days from the time they have been requisitioned to do so. Simoniacal supporters and intermediaries likewise are deprived of dignities and offices. They are disqualified from acting as witnesses, and their possessions, like those of arch-criminals, shall be confiscated. All who communicate with them incur *ipso facto* excommunication, from which they can be absolved only by a pope canonically elected.

On February 21, 1513, Julius II died. He was succeeded on the following March 11 by Giovanni de Medici, then but thirty-eight years of age, who took the name of Leo X. On his deathbed, Julius declared that as Giuliano della Rovere he pardons the schismatic cardinals, but as pope he condemns them. After the sixth session (April 27), over which the new Pope presided, the work of the council progressed more rapidly, owing to the adoption of a more efficient method for the transaction of business. It was difficult to assemble all the prelates for the discussion of questions preparatory to their presentation to a general session of the council. To

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by the Pope, had enacted many useful reform decrees, and it was to the interest of France and other secular powers to prevent these decrees from becoming a complete failure. No less to their interest was it to prevent a new schism. To discuss these questions and to define the position of France in regard to them, Charles VII summoned a national council to meet at Bourges in May, 1438. It was in session from May 1 to June 7. It declared itself neutral in the quarrel between the Pope and Basle and in the end, in opposition to the papal representatives, accepted twenty-three of the Basle reform decrees, modifying some to meet conditions in France. The King accepted the result under constraint to appease the powerful prelates of the council and on June 7 issued an edict, known as the Pragmatic Sanction, which contained nothing else than the twenty-three decrees and the modification of some. The list included a number of Basle decrees that Eugene IV had condemned, the superiority of a general council over the pope, the holding of general councils at regular intervals, limitation of papal reservations, etc. The edict was a law of secular authority in purely ecclesiastical affairs and constituted a shameful infringement upon the rights of the Holy See. Hefele-Leclercq, VII, 1054 sqq.

[7] Hardouin, IX, 1656–60; *Bullarium Rom.*, ed. Taurinen., V, 536–37.

create interest and co-operation, it was decided to divide this preliminary work as had been done in earlier councils, especially in that of Vienne. Twenty-four prelates were elected, eight to head each of three committees. To each of the groups the Pope added other prelates and generals of religious orders. Among these three committees the work of the council was divided. To one was assigned the consideration of ways and means to establish peace among the Christian princes and the extirpation of the schism; to another the program of reform, covering the curial administration, the lives of the cardinals, clergy, and laity; the third was to deal with the Pragmatic Sanction and questions pertaining to faith. Although much of their work was done separately, these committees met frequently in different places for purposes of discussion and for the formulation of definite and in most cases final statements. The work was really done by these committees, so that the council in general session assembled had little more to do than give its *placet*.

On December 17, 1513, the three committees met in general conference, and two days later was held the eighth public session. In it was read an act of Louis XII by which he repudiated the Pisan conventicle and all that had been done therein and declared his acceptance of the Lateran Council, thus bringing about France's official participation. In addition, there were published in this session three constitutions. The first, *Apostolici regiminis*,[8] is of a dogmatic nature and condemned the false philosophical teachings of Peter Pomponatius (Pomponazzi, 1462–1525) and other Averroists who denied the immortality of the soul and maintained the principle of twofold truth, namely, that what is false in philosophy may be true in theology, and vice versa.[9] The second, *Ad omnipotentis*,[10] dealt with the establishment of peace among Christian princes, with preparations for the crusade against the Turks and the return of the dissenting Bohemians to the unity of the Church. The third, *In apostolici culminis*,[11] provided for the reformation of the Curia in the matter of taxes. It concerned itself with the masters of ceremonies, the prothonotaries and notaries, the *clerici camerae*, the auditors of the Rota, penitentiaries, *scriptores*, abbreviators, consistorial advocates, procurators, cantors, secretaries, and other such officials, as well as with every phase of curial administration. The ninth session was held May 5, 1514. In it was published that big and important constitution, *Supernae dispositionis arbitrio*,[12] dealing ex-

[8] Hardouin, IX, 1719–20; *Bull. Rom., ed. cit.*, V, 601–602; Denzinger, *Enchiridion*, no. 738.

[9] For a full exposition of the teaching of Pomponatius, cf. Schaaf, *Conspectus historiae philosophiae recentis* (Romae, 1910), pp. 103–50.

[10] Hardouin, IX, 1721–22.

[11] *Ibid.*, 1723–24.

[12] *Ibid.*, 1747–58; *Bull. Rom.*, V, 604–14.

haustively with reforms in the Curia, in the lives of the cardinals, the clergy, and people. Complaints were made referring to the stubbornness of the French bishops favoring the Pragmatic Sanction, whose term of appearance before the council within sixty days had long expired. After consideration of the excuses offered by the Bishop of Marseilles (the representative of France), the Pope extended the term to the next session of the council. This was held May 4, 1515. Though a year had elapsed since the preceding session, the bishops had not yet put in an appearance, and the prospects were that they had no intention of doing so. A demand was therefore made that they be declared contumacious, but the Pope again extended the term to October 1. In this session was published the constitution *Inter multiplices*,[13] which dealt with certain aspects of the *montes pietatis*, or pawnshops, that is, institutions under ecclesiastical supervision that loaned money to the poor only, without interest or at low rates of interest, the security for which was covered by objects left in pawn, with a view to protect needy persons against the greed of usurers. The Pope and the council declared these institutions in no way illicit or morally wrong, but rather meritorious, and whoever wrote or preached against them in the future incurred excommunication *latae sententiae*.[14] Then followed immediately the publication of the constitution *Regimini universalis ecclesiae*,[15] which concerned itself with ecclesiastical liberty and the episcopal dignity and condemned the abuses of certain clerics enjoying exemption. Another constitution published in this session was the *Inter sollicitudines*,[16] which prohibited under penalty of excommunication the printing of books without the permission of the ordinary of the diocese. Lastly, there was published the bull *Cum inter alia*,[17] which ordered a peremptory citation against the French bishops who used their authority to maintain the Pragmatic Sanction. If by the following October 1 they had not put in an appearance, a definite and final decision would be given in the next session.

The great victory won by Francis I of France, the successor of Louis XII who had died January 1, 1515, over the Swiss at Marignano (September 13–14, 1515) established his reputation in Italy and left to the Pope no other alternative than to throw himself on the mercy of the French King. The latter took advantage of the situation and requested an interview with Leo X at Bologna to settle once and for all the matter of the Pragmatic Sanction, a settlement that in the mind of Francis I meant not

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[13] *Ibid.*, 1773–75; *Bull. Rom.*, V, 621–23.
[14] Holzapfel, *Die Anfänge der Montes Pietatis*, München, 1903; *Cath. Encyclopedia*, s. v.
[15] Hardouin, IX, 1775–79; *Bull. Rom.*, V, 617–21.
[16] *Ibid.*, 1779–81; *Bull. Rom.*, V, 625–26.
[17] Hardouin, IX, 1781–82.

the imposition of that edict on the Pope, but rather its replacement by something that would fit in better with his political policy, and thus bring about the successful termination of the efforts of his predecessors, Charles VII and Louis XI. The result of the interview (December 11–15, 1515) was the abolition of the Pragmatic Sanction and the substitution of a concordat between the Holy See and Francis I. For this concordat, Leo X paid a high price. It granted to the French king the right of nomination not only to five hundred ecclesiastical benefices, as Charles VII had requested, but to all the benefices in the French kingdom, thus placing the control and disposition of ecclesiastical property together with its personnel in the hands of the king. Of the morality of the concordat nothing need be said here. It governed the organization of the Church in France till the French Revolution. However, notwithstanding the magnitude of the concession, it was not without beneficial results, though these were entirely absent from the minds of the original partners. In the first place, it was tantamount to a repudiation of all the antipapal acts of the Councils of Constance and Basle; and secondly, it constituted the chief barrier that prevented the so-called Reformation from securing a foothold in France, for, with ecclesiastical property in the hands of the civil authorities, French royalty had nothing to gain from the Reformation.

In the eleventh session (December 19, 1516) was published the important constitution *Supernae majestatis praesidio* on the art and obligation of preaching.[18] In this document special attention is called to the observance of the constitution *Religiosi* of Clement V.[19] After this, the concordat was solemnly and unanimously approved and the constitution *Pastor aeternus*, outlawing the Pragmatic Sanction, was published.[20] This constitution reaffirmed the authority of the pope over general councils, their convocation, translation, and dissolution,[21] and renewed the bull *Unam sanctam* of Boniface VIII,[22] without prejudice, however, to the declaration *Meruit* of Clement V.[23] Under penalty of excommunication *latae sententiae*, absolution from which was reserved to the pope, the Pragmatic Sanction was to be removed from the royal archives. All were called upon to repudiate it. Clerics who acted in contravention of this constitution were to be deprived of their offices and become disqualified to hold others, while secular rulers were to lose the fiefs received from the Church and rendered unable to receive such in the future. A disturbing

[18] *Ibid.*, 1806–09.

[19] C. 1, ¶ 1, in Clem., De privileg. et excess., V, 7.

[20] Hardouin, IX, 1826–31. Translations of the *Pastor aeternus* are given in the German and French editions of Hefele, VIII, 710–14 and 528–32 respectively.

[21] Denzinger, no. 740.

[22] C.1, Extravag. comm., De major. et obed., I, 8.

[23] C.2, Extrav. comm., De privileg., V, 7.

factor in the council for the past three years had been the old conflict between the bishops and the religious orders, especially the mendicants. As so often before at general councils, on the part of the bishops it was the same old request, that the privileges of the regulars be withdrawn and that they be placed under the direct supervision of the bishops. To meet this situation there was published in this session the much debated bull *Dum intra mentis arcana*,[24] by which the privileges of the regulars were in some measure curtailed.[25]

In the twelfth and last session (March 16, 1517) all the foregoing decrees were confirmed. An ordinance was passed calling for a crusade against the Turks, for which purpose the council ordered the levying of tithes of all the benefices in Christendom for a period of three years. The Pope's plan, however, did not materialize. While he manifested a genuine earnestness in the matter and spared no effort to bring about the organization of a Christian army, the failure of the enterprise must be attributed wholly to the lack of interest and co-operation on the part of the secular powers, suspicious of one another and too much absorbed in their own petty quarrels and intrigues.

There were not wanting bishops who expressed regret at the early dissolution of the council; yet it is difficult to see what would have been the advantage of its continuance. Only a few months later (October 31, 1517) Luther affixed to the castle church door his ninety-five theses. No council, certainly no council with Leo X at its head and surrounded by an array of corrupt cardinals and self-interested bishops, could have stemmed the storm of revolt. The evil was too widespread and its roots lay too deep to be destroyed overnight. Many salutary reform decrees had been enacted by this Council of the Lateran, but unfortunately they were not enforced. In the highest ecclesiastical circles there does not appear to have been any real desire for reform. Leo X himself did not hesitate to ignore repeatedly the decrees in the making of which he played the principal rôle. His curia remained as worldly as ever. Many bishops, instead of recognizing the urgent need of reform in themselves and in the secular clergy, thought of it only in reference to the religious orders, whose privileges were an obstacle to their increasing their sources of revenue. The custom of bestowing ecclesiastical dignities on children continued and, lastly, the curse of pluralism and commendatory benefices remained. It might be added that one of the most flagrant and crying abuses of the time, the traffic in indulgences, did not receive a word of condemnation from the council.

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[24] Hardouin, IX, 1832–35.

[25] For documents relative to this controversy during the council, cf. Hefele, German ed., VIII, 813–31.

The ecumenical character of this council has never been questioned except by the Gallican theologians and jurists, and even among them there have been prominent exceptions. Their reason for this attitude was not, as they asserted, the small number in attendance, but the fact that the council had condemned the Pragmatic Sanction, the abolition of which was a blow to their inimical feeling toward the pope and to their exaggerated national pride.[26]

The decrees of this council were published in the form of constitutions or bulls. In the following, only the decrees incorporated in the bulls are given; lengthy introductions and conclusions are omitted or merely summarized.

From the bull *Apostolici regiminis* (session VIII, December 19, 1513):

Since in our days the sower of cockle, the ancient enemy of the human race, has dared to disseminate some pernicious errors concerning the nature of the rational soul, namely, that it is mortal and one and the same in all men and that this is true at least in philosophy, we wish to adopt suitable remedies to counteract them. Wherefore, with the approval of the council we reprobate and condemn all who assert that the intellectual soul is mortal or is one and the same in all men, and likewise all who seek to cast doubt on these truths; because the soul is not only *vere per se et essentialiter* the form of the human body, as was defined by our predecessor Clement V in the Council of Vienne (canon 1), but it is also immortal and separate and distinct in each body in which it is infused. This is evident from the words of our Lord when He said, "they cannot kill the soul" (Matt. 10: 28), and again, "he that hates his soul in this world, preserves it unto life eternal" (John 12: 25). It is also evident from the fact that He has promised eternal reward and eternal punishment according to the merits or demerits of each, otherwise the incarnation and the other mysteries of Christ would be of no avail to us, nor should we look forward to a resurrection, and the holy and just would be, according to the Apostle, the most miserable of all men (I Cor. 15: 19). And, since truth does not contradict truth, we declare that every assertion contrary to truth illumined by faith is absolutely false, and to teach otherwise we strictly forbid; and we decree that all who adhere to errors of this kind be avoided and punished as heretics and infidels seeking to destroy the Catholic faith. Moreover, we strictly command all professors in universities and other public

[26] Hardouin, IX, 1559–1875; Hefele-Leclercq, VIII, 297–557; Hergenröther, *Handbuch d. allg. Kirchengeschichte*, III, 5th ed., 287–93; Auglia, "Studien zur Gesch. d. V Laterankonzils," in *Sitzungsberichte d. k. Akademie d. Wissenschaften, hist. Klasse*, Wien, 140 (1899), 152 (1906); *Dict. de théol. cath.*, VIII, 2667–87; Pastor, *History of the Popes*, VI–VII; Renaudet, *Le concile gallican de Pise-Milan 1510–12*, Paris, 1922; Baudrillart, *Quatre cents ans de concordat* (Paris, 1905), pp. 42–145.

institutions of learning that when they teach or explain to their students those principles and conclusions in which these false teachers are known to deviate from the truth, namely, the mortality and unity or oneness of the soul, the eternity of the world, etc., they make every effort to offset and refute those false teachings by presenting clearly on these points the truths of the Catholic religion. And since it is not enough to remove the seeds and cut the roots of thistles, for unless they are completely pulled out they will spring up again, so too, since the long study of human philosophy, which God according to the Apostle has made foolish (I Cor. 1 : 20), without the seasoning element of divine wisdom and without the light of revealed truth, leads to error rather than to the elucidation of truth, we by this salutary constitution, with a view to destroying every occasion and vestige of error in regard to the above points of Catholic teaching, ordain and decree that in the future no one constituted in sacred orders, whether secular or regular, shall ~~be obliged to~~ devote his time to the study of philosophy and poetry for five years after the study of grammar and dialectic without at the same time pursuing some study of theology or canon law. If after the completion of five years he wishes to devote himself to these studies, he is free to do so, provided he at the same time or separately (*simul aut seorsum*) prosecutes zealously the study of theology or canon law, so that in these professions the priest may find a means wherewith to cleanse and heal the infected roots of philosophy and poetry. These rules, we command in virtue of holy obedience, must be published annually at the beginning of the school year in universities by the ordinaries in whose territory the institution is located and by the rectors. Whoever presumes to act in contravention of this decree incurs the indignation of God and of his Apostles Peter and Paul.

From the bull *Supernae dispositionis arbitrio* (session IX, May 5, 1514):

1. Since there is nothing more injurious to the Church of God than the promotion of unworthy prelates to the government of the Churches, we ordain and decree that in the future vacant patriarchal, metropolitan, and cathedral Churches as well as abbeys be filled in accordance with the requirements of the constitution of Alexander in the Lateran Council,[27] that is, with persons of mature age, good moral character, and the necessary learning, and not at the instance of anyone, nor through *commendam* and administration or any other manner, unless in consideration of the needs of the Churches or in consideration of prudence, nobility, uprightness, experience, or time-honored courtesy or common consent (*curialitatis antiquae*) combined with the required learning, it should appear expedient to do

[27] Alexander III in the Third Lateran Council, canon 3.

otherwise. The same we wish to be observed in regard to the election and postulation of those whose election and postulation the Holy See has been accustomed to accept. Should it happen that vacant bishoprics and abbeys are filled with persons who have not yet attained the thirtieth year of age, dispensations may be granted in the case of the former to those only who have completed their twenty-seventh year, and in the case of abbeys to those only who have completed their twenty-second year.

2. That the promotion of competent persons may be realized, we decree that the cardinal who is commissioned to receive the report of elections, postulations, and provisions of cathedral churches and abbeys, shall, before he presents the result of his examination of the report in consistory, as is customary, make it known in person to the oldest cardinal of each of the three orders in the consistory, or, if on the day on which he received his commission no consistory is held, make it known to them through his secretary or through any one of his *familiares;* these cardinals shall then as soon as possible make it known to the others. The matter of the election, postulation, and promotion is to be summarily examined by the said cardinal; opponents, if any, are to be summoned, competent and trustworthy witnesses questioned, and, if deemed expedient, others may be called *ex officio*. A copy of the process, together with the testimony of witnesses, must be laid before the consistory by the cardinal, and he may not confirm the report before the candidate has visited the majority of the cardinals, so that these may, so far as the candidate is concerned, learn through interview (*oculata fide*) and personal contact what will be conveyed to them by the referee colleague. The candidate is bound by an old and laudable custom, which is to be strictly observed, to visit the cardinals in the Curia as soon as possible.

3. That the episcopal dignity may be protected against the machinations of dishonest men and the calumnies of accusers, we decree that no bishop or abbot may be deprived of his dignity at the instance or request of anybody without a complete and legitimate defense; not even in the case of a notorious crime may this be done without an examination of the parties seeking such deprivation and without satisfactory proof. No prelate is to be transferred against his will except for weighty and legitimate reasons, and then in accordance with the form and decree of the Council of Constance.[28]

[28] The decree referred to is the following: "Cum ex praelatorum translationibus ecclesiae ipsae de quibus transferuntur, plerumque gravibus in spiritualibus et temporalibus subjaceant dispendiis et jacturis; praelati quoque nonnumquam jura et libertates ecclesiarum suarum translationis formidine non adeo solerter ut alias prosequuntur; ne ad importunitatem quorumdam, quae sua et non quae Jesu Christi quaerentium, Romanus pontifex forsan ut homo facti nescius, in hujusmodi circumveniatur, aut alias leviter inclinetur, praesentibus statuimus et ordinamus, invitorum episcoporum et superiorum translationes, absque magna et rationabili causa, quae vocata parte cognita fuerit et decisa de consilio S.R.E. cardinalium, vel majoris

4. As experience has often taught, monasteries sustain grave losses both in spiritual and temporal affairs through provisional collation and occupation (that is, when given *in commendam*), because, partly through the negligence and partly through the greed and carelessness of those to whom they are entrusted, their buildings fall to ruin, divine worship in them declines day by day, and now and then opportunity is given, especially to laymen, to criticize and speak ill of the practice, not without detracting from the honor of the Apostolic See from which such concessions proceed. Therefore we wish and decree that when in monasteries the office of abbot becomes vacant through the death of the incumbent, these monasteries may not in the future be given *in commendam* to anyone under any agreement, unless, to maintain the authority of the Apostolic See and to meet the malice of the enemies of that see, in consideration of the condition of the times and with the advice of our brethren, it should be deemed expedient to do otherwise. But, in accordance with the above-mentioned constitution, they must be provided with competent persons, so that, as becomes these monasteries, able abbots may preside over them. But those monasteries that will be given *in commendam* are to be given only to cardinals and well-qualified and well-deserving persons, so, however, that the *commendatarii* to whom those monasteries will in the future be given *in commendam*, whatever dignity, honor, or preeminence they may enjoy, including the cardinalitial dignity, if they have a revenue separate from that of the monastery, shall be bound to apply a fourth part of their revenues to the restoration of the buildings or to the purchase and repair of decorations, vestments, and ornamented altar-cloths or to the relief of the poor, as necessity may require; but if the revenue be a common one they shall be bound to apply a third of all the incomes of the monastery given them *in commendam* to the above-mentioned purposes and to the support of the monks after all other obligations have been deducted. Documents drawn up in connection with monasteries thus given *in commendam* must be provided with a clause specifically expressing this, otherwise they are to be regarded as null and void. And, since it is only proper that churches of this kind should suffer no diminution of incomes,

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partis eorumdem, et cum subscriptione, de cetero fieri non debere. Inferiores vero, ut abbates, aliique perpetuo beneficiati, inviti absque justa et rationabili causa cognita amoveri seu privari non debeant. Adjicientes, quod in mutationibus abbatum subscriptio cardinalium interveniat, sicut in episcopis est praemissum; salvis constitutionibus, consuetudinibus, et privilegiis ecclesiarum, monasteriorum et ordinum quorumcumque." The decree was published in the thirty-ninth session (October 9, 1417) before the election of Martin V, but remained practically a dead letter. When, under Sixtus IV, Bishop Nicholas of Cammin was to be transferred to Ermland against his will and contrary to this decree, it was argued in consistory that Martin V had approved only those decrees dealing with matters of faith, that is, those against the current major heresies. Raynaldus, *Annal.*, ad an. 1478, no. 47. The decree of Constance is given in Hefele-Leclercq, VII, 465.

we decree that no financial burdens of any kind be laid upon the revenues of these churches, except *ex resignationis causa* or for some other reason considered in our secret consistory as just and proper.

5. We decree furthermore that in the future parochial churches, major dignities, and other ecclesiastical benefices with revenues that do not reach annually the sum of 200 ducats according to the common value, as well as hospitals, leper institutions, pilgrim-houses, and the like, which have been established for the poor, whatever their value, may no longer be given *in commendam* to the cardinals of the Roman Church or conferred under any title whatsoever on anybody, unless they have become vacant through the death of their servants (*familiares*), in which case they may be given *in commendam* to the cardinals, who, however, are bound to give them over within six months to persons capable and agreeable to them, without prejudice to their right of regress to these benefices.

6. Branches of churches, monasteries, and military orders are not to be separated from their mother foundations without reasonable and legitimate cause. *Uniones perpetuae* may not be established except in cases permitted by law or without a reasonable cause.

7. Dispensations for more than two incompatible benefices may not be granted except for weighty and urgent reasons to those only who are qualified according to the form of the common law. Those persons, whatever their dignity, who hold more than four parochial churches or their perpetual vicariates and *majores et principales dignitates*, we limit from now on to a period of two years, within which they must resign all but four into the hands of the ordinary, who shall confer them on others, notwithstanding any, even general, reservation or one resulting *ex qualitatibus resignantium personarum*. If at the expiration of this term the required resignations have not been handed in, then all benefices shall be regarded as vacant and be freely bestowed on others, the negligence to resign, however, to be punished in accordance with the constitution *Exsecrabilis* of John XXII.[29] We likewise decree that special reservations of benefices of any and every kind are no more to be granted at the instance or request of anybody.

The second part of this constitution concerns itself with the cardinals.

Since the cardinals are the highest dignitaries in the Church after the pope, it is proper that they should be to all examples of purity of life and of the splendor of virtue. Wherefore, we not only exhort and admonish them but also ordain and decree that they live in accordance with the teaching of the Apostle, soberly, chastely, and piously, abstaining not only from evil but also from every appearance of evil.

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[29] C.un., Extrav. Joan. XXII, De praeb. et dignitat., III.

1. They are to be vigilant, attentive to the divine offices and the celebration of mass, have their chapels in becoming places, abstain from luxury and pomp in their houses, table, furniture, and servants, have before their eyes priestly moderation, and treat in a friendly manner all who come to the Roman curia.

2. They shall not have prelates and bishops as servants, lest those by consecration and sacred character superior to others be reduced to a menial ministry and thus bring contempt on the pastoral office. Those whom they now have or will have in the future, let them treat as brothers and in a manner becoming their state.

3. Since they assist the Roman pontiff, the common father of all the faithful, they may not be *personarum acceptores* or advocates. We decree moreover that they harbor no partiality, do not become *defensores* of princes, communities, or others against anyone except in so far as justice and equity demand and their dignity and state require; but, having divested themselves of all prejudice and self-interest, let them strive to end disputes and bring about peace among all. Let them with pious zeal promote the just undertakings of princes and all others but especially those of the poor and the religious and, as becomes their office, let them so far as their resources will permit aid the oppressed and those unjustly burdened.

4. At least once each year they shall, personally if present in the Curia, or, if absent, through a competent vicar, visit the *tituli sui loca,* make inquiry concerning the clergy and people of the churches subject to their title, shall be vigilant regarding divine worship and the properties of those churches, inform themselves about the life and morals of the clerics and people and with paternal affection admonish all to lead upright and virtuous lives.

5. For the increase of divine worship and for the salvation of his soul, each cardinal shall donate to his titular church either during life or by will *in mortis articulo* as much as is necessary for the suitable maintenance of one priest, or, in case the church should need repairs or other aid, let him make his donation for this purpose, according as his conscience may dictate.

6. Although relatives, especially if they are poor and well-deserving, are not to be neglected but are rather to be cared for, nevertheless, they may not be provided with many benefices or so enriched by means of ecclesiastical revenues that others sustain loss through such generosity; a practice that opens the way to scandal. We decree, therefore, that the goods of the churches be not spent thoughtlessly or squandered, but applied to good and pious purposes.

7. We wish also that the cardinals give due attention to the needs of the churches and benefices bestowed on them *in commendam,* and provide worthy and competent auxiliary bishops or vicars for cathedrals with adequate compensation. For other churches and for monasteries given them *in commendam* let them provide a sufficient number

of clerics or religious to give praiseworthy service to God. They shall also be solicitous for the preservation of the buildings, possessions, and rights, and dilapidated structures they shall have restored.

8. In regard to the number of servants and horses, the cardinals should act cautiously and with foresight, lest having a greater number than their means, state, and dignity will permit, they can be accused of indulging in luxury and extravagance; while, on the other hand, they will be considered greedy and niggardly if having an abundance they furnish food to a very few. For the house of a cardinal should be a hospitable one, a harbor and shelter for learned and upright men, for impoverished nobles and persons of high repute and esteem. Let them, therefore, act prudently in this matter, having a knowledge of the character of their servants, lest their wickedness anchor upon them a bad name and thus furnish occasion for gossip and calumny among the common people.

9. Each cardinal should prove himself to be the ruler of his house not only in matters external that are apparent to all but also in matters secreted within; he should be surrounded by virtuous priests and Levites in clerical garb. Let him see to it that no one in his household constituted in sacred orders and having a benefice wears clothes of different colors or clothes out of place in the ecclesiastical order. Those constituted in the order of the priesthood must wear garments of a color not forbidden to clerics by law, and these garments must extend at least to the ankles. Those having dignities in cathedral churches, canons also of cathedrals, and those having the first or chief dignity in collegiate churches, as well as chaplains of cardinals celebrating mass, are bound to wear the capuche in public.

10. The *parafrenarii* whose work is steady and arduous may, even if they are clerics but not constituted in the sacerdotal order, wear shorter and more convenient garments, so however that they are in keeping with propriety.

11. The other clerics shall carry out all things temperately and with discretion; shall not cultivate long hair or a beard; neither shall they have horses and mules with coverings and ornaments made of velvet or silk, but for things of this kind let them use coarse cloth or simply hide or leather.

12. If any of the aforesaid servants act in contravention of these provisions, or after three months from the time of the publication of the present instruction, in spite of a previous admonition, continue to wear the prohibited garments, let them incur the sentence of excommunication. If within three more months they do not reform, let them be suspended from the collection of the revenues accruing from their benefices. If for six more months they continue in their obstinacy, let them after a legitimate admonition be deprived of all their benefices, which being then vacant may be freely disposed of by the Apostolic See.

13. All of these provisions are to apply also to the servants of the Roman pontiff, to all *clerici beneficiati,* those constituted in major orders, and to the Curia; by way of a single exception, the servants of the Roman pontiff may in accordance with custom and in consideration of the papal dignity wear garments of red color.

14. And since the *operum optimorum cura* pertains chiefly to the cardinals, these shall endeavor to ascertain what regions are infested with heresies, errors, and superstitions against the true and orthodox faith; where the observance of the divine commandments is neglected; what kings, princes, or people are burdened with war or fear that they will be so burdened. These and similar matters they shall strive to learn and keep the reigning Roman pontiff informed in regard to them, so that he may seek opportune and salutary measures to remedy such evils.

15. Since it is known from almost daily experience that many evils often come about and not a few scandals arise in provinces and cities, not without detriment to the Apostolic See, on account of the absence of their legates *de latere,* we decree that cardinals who are appointed as legates in provinces and cities, may not entrust their office to representatives or any other officials, but must themselves be present during the greater part of the year and administer it themselves with care and concern. Those cardinals who now hold the title of legate, must within three months if they are in Italy, or if they are outside of Italy, then within five months, from the day of the publication of the present instruction, betake themselves to their provinces and reside there the greater part of the time, unless by our order or by that of our successor they are detained at the Curia on account of some important business or are sent to other localities, as necessity may require. In this case they may have in those provinces and cities vice-legates, auditors, and other customary officials, provided with suitable compensations. He who does not observe each and all of the foregoing provisions, loses all remuneration in connection with the legation. Legations have been established for the benefit of the people, not for the benefit of the legates.

16. Since the chief duties of a cardinal are to assist the pope and to take care of the business of the Apostolic See, we decree further that all cardinals reside at the Roman curia and that the absentees return, if they are in Italy, within six months, if outside of Italy, within a year, from the day of the publication of this constitution; otherwise they lose the revenues of their benefices and the emoluments of all their offices and shall, moreover, be deprived during their absence of all privileges generally and specially granted to cardinals, those being excepted who by reason of an office bestowed by the Apostolic See, or at the command or with the permission of the Roman pontiff or for some other legitimate cause, such as illness, happen to be absent; those privileges and immunities granted to the cardinals

and contained in our bull under date of our coronation, they retain.

17. We decree also that the total funeral expenses of the cardinals must not exceed the sum of 1,500 florins, and only *justis allegatis causis et rationibus* may the executors spend more. The solemn obsequies and the *castrum doloris* take place on the first and ninth day; during the octave the customary masses may be celebrated.

18. Out of reverence for the Apostolic See and for the common honor of the pope and the cardinals; moreover, that occasions for scandal may not be given, that a greater liberty of voting may obtain in the sacred senate (consistory), and that each cardinal may freely and safely express his mind according to his conscience, we decree that no cardinal may under penalty of perjury and disobedience reveal in writing or by word of mouth or in any other way the votes cast in consistory, or anything done or said there that might lead to the hatred, injury, or scandal of another. The silence imposed by the pontiff in reference to certain matters is to be observed, and he who acts contrariwise incurs besides the ordinary penalties also excommunication *latae sententiae,* from which, except *in extremis,* he can be absolved only by the Roman pontiff.

The third part of the constitution deals with the reform of the Curia and others.

1. Since youth like every age is prone to evil and requires painstaking labor to habituate it to the good, we decree that masters and teachers instruct their pupils not only in grammar, rhetoric, and other subjects of this kind, but impart to them also religious instruction, dealing especially with the commandments, the articles of faith, hymns, psalms, and the lives of the saints. On festival days their instructions ought to be limited to matters pertaining to religion and good morals, urging them to go to church, to attend mass, vespers, and the divine offices, and to listen attentively to the sermons and instructions.

2. To abolish that execrable vice of blasphemy which brings the name of God and things sacred into such contempt, we decree that whoever openly or publicly speaks evilly and dishonorably of God and by offensive and obscene language blasphemes our Lord Jesus Christ or the glorious Virgin Mary, His Mother, shall, if he be a public official, for the first and second offense, lose three months' remuneration attached to that office; for the third offense, let him be regarded as *eo ipso* deprived of that office. If he be a priest or cleric he shall for the first offense be deprived for one year of the revenues of his benefices. For the second offense, if he has only one benefice, he shall be deprived of it; if he has several, he shall lose the one of which his ordinary decides to deprive him. For the third offense, he shall be regarded as *eo ipso* deprived of all his dignities and benefices,

and furthermore, rendered unqualified to hold them again, so that they may be freely disposed of. If the offender be a layman of noble extraction, he shall for the first offense pay twenty-five ducats, for the second fifty ducats, which are to be applied to the basilica of the chief of the Apostles, and for the third he shall lose his rank. A layman of the ordinary class shall be punished with imprisonment; if, however, he is guilty of more than two offenses, he shall with the hood of infamy (*mitra infamiae*) on his head stand for one day at the door of the principal church. He who offends repeatedly in this matter is in the discretion of the judge to be condemned to life imprisonment or to the galleys. *In foro conscientiae* no one may absolve a blasphemer without the imposition of the severest penance. He who blasphemes other saints shall be punished more leniently, according to the discretion of the judge and with consideration of the person. We decree also that secular judges who do not proceed against and duly punish blasphemers when they are brought before them, are to be judged guilty of the same offense and punished accordingly. Those, however, who are zealous and strict in punishing those guilty of this vice, gain each time an indulgence of ten years and receive one third of the fines. Whoever hears anyone blaspheming is bound to rebuke him severely if it can be done without danger to himself, or report him within three days to an ecclesiastical or secular judge. If several have heard him at the same time, each is bound to report him unless they agree that one can act for all. In virtue of holy obedience we exhort and admonish secular rulers and all Christians for the honor of the holy name to enforce and to have these provisions enforced in their dominions and territories, assuring them of a generous heavenly reward for so good and pious a work. For each blasphemer brought to punishment they gain an indulgence of ten years and receive one third of the fines. The same indulgence and financial reward are granted also to those who report blasphemers to the proper authorities. All other penalties directed by ecclesiastical canons against blasphemers remain in force.

3. That clerics especially may live chastely and continently as required by the sacred canons, we decree that those who do the contrary be severely punished. If anyone, cleric or layman, be convicted of the crime on account of which the anger of God came upon the children of unbelief, let him be punished in accordance with the sacred canon or the civil law respectively. *Concubinarii*, whether clerical or lay, shall be punished in accordance with the same canons. Toleration by superiors, contrary custom, or any other subterfuge cannot be accepted as justifiable excuses; these must be corrected and those who tolerate them punished in accordance with the law.

4. For the peace and benefit of the cities and of all localities subject to the Roman Church, we hereby renew the *Constitutiones*

Aegidii olim episcopi Sabinensis (1356)[30] and prescribe their strict observance.

5. That that nefarious pest known as simony be forever banished from the Roman curia and from all Christendom, we hereby renew the constitutions published by our predecessors against it, decreeing their strict observance and the imposition of the penalties prescribed therein on delinquents.

6. We decree also that anyone who has a benefice, with or without the *cura animarum*, and after six months from the time that he obtained it has not said the divine office (Breviary), though every reasonable impediment has ceased to exist, may not make the revenues of the benefice his own in proportion to the time of the omission, but is bound to apply them as unjustly obtained to the church building or use them to supply the needs of the poor. If he continues this neglect, he shall, after having been warned beforehand, be deprived of the benefice, for it is *propter officium* that the benefice is conferred. He who does not recite the divine office at least twice in fifteen days is punishable in this way, that he has placed himself in a position to be deprived of his benefice; in addition he will have to give an answer to God for this neglect. In the case of those who have several benefices, the punishment is reiterative as often as they are convicted of acting in contravention of this provision.

7. Since the plenary disposition and administration of the revenues of cathedral and metropolitan churches, of monasteries, and all other ecclesiastical benefices belong solely to the Roman pontiff and to those who canonically hold them, and secular princes may not intrude themselves and interfere in matters belonging to said churches, monasteries, and benefices, we decree that the incomes and revenues of churches, monasteries, and benefices may not be sequestrated, seized, or in any manner held, nor, if held under some fancied pretext, may the respective ecclesiastical administrators be hindered in their free disposition of them by secular princes, not even by the emperor or kings or their offcials and judges, nor by any other person whether public or private. What has been sequestrated or seized must be restored freely and integrally, without exception and delay, to the prelates to whom they *de jure* belong. If anything has been dissipated or squandered, those who are responsible for the sequestrations and seizures must make full satisfaction to the prelates under penalty of excommunication or interdict. Those who act contrary to these provisions shall be punished with ecclesiastical censures, with the deprivation of the fiefs and privileges that they have received from the Church, and with the punitive measures prescribed by the canons, all of which we hereby renew.

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[30] Cardinal Albornoz, *Liber constitutionum*, Jesi, 1475.

8. Since human and divine law give laymen no authority over ecclesiastical persons, we renew the constitutions *Felicis* of Boniface VIII [31] and *Si quis suadente* of Clement V,[32] and also all other Apostolic decrees issued in defense of ecclesiastical liberty and against those who seek to destroy it, the penalties contained in the bull *In Coena Domini* [33] against the latter to remain in force. The decisions of earlier general councils forbidding, under penalty of excommunication, the imposition of tithes and other burdens on ecclesiastical persons, or even their acceptance when freely given, are hereby renewed. Those who give aid or advice in the matter or in any manner abet transgressors, incur excommunication *latae sententiae*. Cities and communities are subject to interdict. Prelates submitting to such impositions or consenting to them without the express permission of the Roman pontiff incur *ipso facto* excommunication and deposition.

9. Since sortileges through the invocation of demons, incantations, divinations, and other species of superstition are forbidden by the civil and canon law, we decree that clerics who are found guilty of such practices be punished in accordance with the judgment of superiors; in case of obstinacy they are to be deposed and confined temporarily in a monastery. Laymen of both sexes are subject to excommunication and other penalties of the law, both civil and canonical.

10. That all false and fictitious Christians of whatever race or nation, especially those tainted with heresy, and Judaizers may be completely driven out of Christian communities and especially out of the Roman curia and duly punished, we decree that careful investigation be made everywhere and above all in the said Curia, and action taken against them by judges appointed by us. If convicted, let them be duly punished; in case of relapse, let them be banished from the Church without hope of pardon.

11. These decrees and ordinations concern life, morals, and ecclesiastical discipline. They are binding on all, including our officials, whether they reside at the Roman curia or elsewhere, and we wish and decree that they be inviolably observed. We decree further that they become effective two months from the time of their publication.

From the bull *Inter multiplices* (session X, May 4, 1515):

Some time ago there was carried on among theologians and jurists, not without scandal to the people, a controversy which, as we have

[31] C.5, VI°, De poenis, V,9.

[32] C.1, in Clem., De poenis, V,8.

[33] This bull is so called because from 1364 to 1770 it was published annually at Rome, and since 1567 elsewhere, on Holy Thursday.

learned, has recently been renewed, regarding the relief of the poor by loans to be made to them by the public authorities, a system of relief commonly know as *montes pietatis*, which have been established in many cities of Italy by the officials of the cities and other outstanding Christian men for the purpose of relieving the needs of the poor by loans of this kind and thus protecting them against the avarice of usurers. This institution has been approved by holy men and has also been indorsed and confirmed by our predecessors, the supreme pontiffs. In regard to the legality of the institution, the opinions of theologians and jurists were divided. Some maintained that those *montes* were illicit in which something beyond or in return for (that is, interest) the money loaned was demanded by the promoters from the poor to whom the loan was given and that these promoters could not escape the crime of usury or injustice, since, as St. Luke testifies, Christ expressly forbade the practice (Luke 6: 34).[34] For usury means nothing else than gain or profit drawn from the use of a thing that is by its nature unfruitful, a profit that is acquired without labor, cost, or danger. The same theologians and jurists maintain further that those institutions militate against commutative and distributive justice, because the expenses for their maintenance are extorted solely from the poor to whom the loans are given. Moreover, they add, they are an incentive to delinquency, incite to theft, and promote general carelessness.

On the other hand, there were many theologians and jurists who held the contrary opinion and maintained that the loan was merely a *conditio sine qua non*, was gratuitous and not a direct cause of the interest; the custody of the object pawned, however, and consequently the space, labor, and personal responsibility involved were legitimate conditions or titles upon which a moderate interest could be demanded. He who enjoys advantages ought also carry the burden, especially if the Apostolic authority acquiesces. This opinion was approved by our predecessors, the Roman pontiffs, Paul II, Sixtus IV, Innocent VIII, Alexander VI, and Julius II and defended and preached to the people by saints and men held in high esteem for their sanctity.

Wherefore, wishing to make opportune provisions in this matter and commending the exertions of both parties, one for its zeal for justice against the practice of usury, the other for its love of truth and devotion that the needs of the poor may be relieved, with the approval of the holy council we declare and define that the aforesaid *montes pietatis*, established by the civil authorities and thus far approved and confirmed by the Apostolic See, in which the loan is gratuitous but for expenses and indemnity only a moderate rate of

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[34] This passage of St. Luke is not to be understood as a condemnation of interest; it is only an exhortation to general and generous benevolence.

interest is received, are not to be declared a species of evil or an incentive to evil, nor are they in any manner or form to be condemned as usurious, rather they are meritorious and ought to be approved, and their benefits and spiritual utility as well as the indulgences granted by the Apostolic See in connection with them preached to the people. Other *montes* similar to the above may be established with the approval of the Apostolic See. It would indeed be much more perfect and holy if such *montes* were *omnino gratuiti*, that is, if those who establish them would provide some fund or revenues that would cover, if not all, at least half the salaries of officials and assistants, which would lighten the burden of the poor. For the establishment of such funds the faithful ought to be invited by means of greater indulgences. All religious and ecclesiastics, as well as secular persons, who in the future presume to preach or argue by word or in writing against the contents of this constitution, incur the penalty of excommunication *latae sententiae*, privileges of any nature whatsoever notwithstanding.

From the bull *Regimini universalis ecclesiae* (session X, May 4, 1515):

From trustworthy authority it has come to our knowledge that canons of patriarchal, metropolitan, cathedral, and collegiate churches and other secular clerics, under cover of exemptions and liberties obtained from the Apostolic See, have been guilty of many abuses detrimental alike to themselves and to others, disrgarding the corrections and ordinances of their ordinaries and setting aside their jurisdiction in regard to them. Some there are who, in anticipation of escaping punishment through the privilege of exemption, do not fear to indulge in many and grave excesses which would not be committed were it not for the exemptions that they enjoy; excesses that are productive of grave scandals, particularly so when one considers that those whose duty it is to correct them fail to do so.

1. Wherefore, that under such pretext crimes may not go unpunished and a counteractive be applied to the disease, we with the approval of the holy council decree that in the future those to whom the Apostolic See has committed the correction and punishment of those exempt, be vigilant in this matter and conscientiously perform the duties of the office entrusted to them. As soon as a transgression by anyone exempt becomes known to them, let them proceed to punish the delinquent in such a manner that will forever deter him and others from perpetrating a similar offense. Should they prove negligent, then the ordinaries are personally to admonish them if it lies within their jurisdiction and supervision, otherwise by public edict attached to the doors of the cathedral or other churches where the judges of the exempt reside or, where there are no judges, on the

doors of the churches where the exempt committed the crime, so that they may punish and chastise the culpable exempt within a period prescribed by them. If they heed not the admonition or refuse to consider it, then, that they may be punished in the matter in which they have been delinquent, they are to be deprived for this time of all connection with it and may in no manner intrude themselves, but with the authority of the Holy See the ordinaries shall undertake the investigation, conclude the process, and send the result of their inquiry for examination to the Holy See, all this at the expense of the parties exempt.

2. Notaries of the Holy See, whose office was instituted by our predecessor Clement (I) for the purpose of examining and recording the acts of the martyrs, and who have been elevated to the office of prothonotary and wear the alb and rochet, and also other officials of the Holy See who actually (*actu*) exercise their office, are in civil and criminal matters exempt from all jurisdiction of the ordinaries. On the other hand, notaries who do not wear the aforesaid insignia, unless they shall have assumed them within three months after the publication of this constitution, and those who in the future assume them and do not wear them continually, also those officials who do not actually exercise their office, enjoy no exemption in civil and criminal causes when the sum does not exceed twenty-five gold ducats. If, however, in civil causes the sum exceeds twenty-five ducats, they are exempt from the jurisdiction of their ordinaries.

3. In regard to the *familiares* of the cardinals, only those enjoy the privilege of exemption who are *actu domestici et continui commensales;* those also who have been sent out by the cardinals to negotiate business for them, and those who *recreationis causa* are for a time absent from the Roman curia. Others enjoy no exemption and are subject to the jurisdiction of their ordinaries.

4. The constitution *Attendentes* of the Council of Vienne,[35] commanding ordinaries to visit annually the convents and monasteries of nuns subject immediately to the Holy See and located in their dioceses, is hereby renewed and must be strictly observed, notwithstanding exemptions and privileges to the contrary. By this no prejudice is to be engendered or entertained against the ordinaries in cases in which jurisdiction over those exempt has been given them *a jure.*

5. Hereafter, exemptions granted *pro tempore* without a reasonable cause and without consulting the parties concerned, are null and void.

6. Since ecclesiastical order is disturbed when jurisdictions are encroached upon and since we are striving as best we can to favor the jurisdiction of the ordinaries, to put an end to litigations, and

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[35] C. 2, in Clem., De statu monach., III, 10. Canon 4 of the Council of Vienne.

to reduce the excessive expenses of the litigants, we decree and ordain that all spiritual, civil, and mixed causes that in any way concern the ecclesiastical forum, also beneficiary causes, provided the benefices have not been generally reserved and the revenues of each do not exceed twenty-five gold ducats, be in the first instance examined and settled outside the Roman curia and before the local ordinaries, so that no one may appeal before the final decision and no appeal, if one be made, be admitted, except from an interlocutory judgment equivalent to a final decision or when the complaint forms no part of the chief business and is such that no redress can be obtained by an appeal from the final sentence, unless one party having a well-grounded fear of the power of his opponent or for some other good reason, which, however, must be proved at least *semiplene* otherwise than by his own oath, would not dare to litigate the matter before the ordinary; for in such a case the matter can be examined and brought to a settlement in the first instance in the Roman curia. Outside of such cases, appeals and their commissions as well as the commissions of other causes of this kind and whatever results therefrom, shall in the future be null and void. Judges and conservators appointed by the Apostolic See, if they have not graduated in either canon or civil law, shall, in case they are requested by one or both parties, be bound to accept an assessor not prejudicial to them and decide the matter in accordance with his statement.

7. We have heard on good authority that many Churches and the bishops presiding over them both on this and on the other side of the Alps, are disturbed and molested in their rights, freedom, and authority by princes and nobles who, under the pretext of the right of patronage which is supported by no Apostolic sanction, without the authority of the ordinaries and letters patent from them, and without a *titulus coloratus*, bestow benefices not only on clerics but also on laymen and punish delinquent priests and clerics according to their pleasure; that they steal and appropriate tithes due to the churches and other revenues belonging exclusively to the bishops, or command that such things be done and forbid that such revenues, whatever their nature, be taken out of their cities and territories; that they occupy and hold unjustly fiefs, lands, and other possessions, or by means of threats, violence, and other indirect ways seek to compel the concession to them of fiefs and other properties of the churches and compel also the collation of ecclesiastical benefices on persons nominated by them, and that they have not only permitted but even commanded many other losses, injustices, and wrongs to be inflicted on the aforesaid Churches, their prelates, and clerics. Wherefore, considering that laymen possess no authority over ecclesiastical persons and property and that it is just and reasonable to enforce the law against those who presume to offend

in such matters, and considering, moreover, how derogatory such conduct is not only to our honor and to that of the Apostolic See but also to the peace and well-being of ecclesiastical persons, we renew all those constitutions that have been published in regard to the payment of tithes, against those who rob and profane churches, against incendiaries and devastators of fields, against those who carry off and detain cardinals, bishops, and other ecclesiastical persons, secular as well as regular, usurp their rights and jurisdiction, molest and hinder them in the exercise thereof, compel them to grant ecclesiastical benefices to persons nominated by them and to make other concessions, namely, of ecclesiastical fiefs and properties that are contrary to law; also against those who make statutes that are opposed to ecclesiastical liberty and against all those who are abetters of the aforesaid crimes and offenses. And since the foregoing crimes are not only contrary to justice and right but also in the highest degree an affront and outrage to ecclesiastical liberty, that we may render to God a worthy account of the office committed to us, we admonish in a spirit of paternal affection the emperor, kings, princes, dukes, margraves, counts, barons, and others, whatever their status, dignity, and authority, commanding them in virtue of holy obedience, that they observe the foregoing provisions and see to it that they are strictly observed by their subjects, any and every custom to the contrary notwithstanding, if they wish to avoid offense to God and escape the condign punishment of the Apostolic See. All collations of benefices made in the manner indicated, we declare null and void, and incumbents of such benefices are disqualified from holding other ecclesiastical benefices until they have been granted a dispensation by the aforesaid See.

8. We strictly command all patriarchs, primates, archbishops, and bishops, that they may render to God a worthy account of the office committed to them, to observe the decrees of the councils. Provincial synods must be held every three years and must be attended also by those who are exempt, privilege or custom to the contrary notwithstanding. Those who prove negligent in this matter shall be punished in accordance with the provisions of the canons.

9. The constitution *In plerisque,* published in the Council of Vienne,[36] decreeing for the protection of the honor of the episcopal dignity that among other persons especially no religious is to be appointed to the charge of impoverished cathedral churches having no cleric and no Christian people, is hereby renewed, and we wish and command that it be strictly observed, unless for some just cause, to be approved in secret consistory, we should decide otherwise.

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[36] C. 5, in Clem., De elect., I, 3. This decree was not published in the Council of Vienne as is evident from the formula, "de consilio fratrum nostrorum statuimus."

From the bull *Inter sollicitudines* (session X, May 4, 1515):

While a knowledge of the sciences can be easily obtained through the reading of books, and the art of printing, which through the divine goodness has been invented and in our own time greatly perfected, has brought untold blessings to mankind, because at a small cost a large number of books can be procured, by means of which those so disposed may easily devote themselves to a study of the sciences, and men versed in the languages, especially Catholics, of whom we desire an ever increasing number for the Church, may conveniently improve themselves, and which are useful, moreover, for the instruction of infidels and for strengthening the faith of those who already possess it, nevertheless, many complaints have come to us and to the Apostolic See that some masters in the art of printing books in different countries presume to print and publicly sell books translated from the Greek, Hebrew, Arabic, and Chaldaic into the Latin language and different vernaculars, which contain errors in matters of faith and teachings contrary to the Christian religion; also attacks on persons holding positions of dignity and trust, the reading of which is not only not conducive to the intellectual well-being of the reader but also leads to grave errors in matters of faith and morals, whence have arisen numerous scandals and daily greater ones are to be feared.

Wherefore, that that invention, so advantageous to extending the glory of God, to the increase of the faith, and the diffusion of the arts and sciences, may not have the contrary result and become an obstacle to the salvation of souls, we have deemed it advisable to direct our attention to the printing of books, lest in the future thorns grow up with the good seed or poisons be mixed with the medicine. Wishing, therefore, to provide an opportune remedy in regard to this matter, we, with the approval of the holy council, decree and ordain that in the future no one shall presume to print or cause to be printed, in Rome or in any other city or diocese, any book or any other writing whatsoever unless it has first been carefully examined and its publication approved by our vicar and the master of the Sacred Palace, in other cities and dioceses by the bishops or by competent persons appointed by them and by the inquisitor of the city or diocese in which the books are to be printed. This approval must be given over the personal signatures of the censors, free of charge and without delay, under penalty of excommunication. Those who act contrary to this constitution shall, besides the loss and destruction of such books by fire, the payment of 100 ducats toward the construction of the Basilica of St. Peter, and suspension from the printing of books for a period of one year, incur the sentence of excommunication, and, should they continue in

their obstinacy, they shall be punished by the bishops or by our vicar with all the penalties of the law, so that from their example others may be deterred from committing similar offenses.

From the bull *Supernae majestatis praesidio* (session XI, December 19, 1516):

1. With the approval of the holy council we decree and ordain that no clerics, whether seculars or members of any of the mendicant orders or any other order to which the office of preaching pertains by right, custom, privilege, or otherwise, be admitted to exercise that office unless they have first been carefully examined by their respective superiors and found competent and fit as regards moral integrity, age, knowledge, uprightness, prudence, and exemplariness of life. Of this approved competency they must, wherever they may preach, acquaint the local ordinary by means of authentic letters or other instruments from those who examined and approved them for this work.

2. We command all who are engaged in this work and who will be so engaged in the future that they preach and explain the truth of the Gospel and the Holy Scriptures in accordance with the teaching, interpretation, and exposition of the doctors of the Church, whom the Church or long usage has approved and the reading of whom she has thus far accepted and in the future will accept, without adding thereto anything that is contrary to or in any way at variance with their teaching. Nor shall they presume to announce or predict in their sermons any fixed time of future evils, the coming of Antichrist or the day of the last judgment, since the truth says: "It is not for you to know the times and moments which the Father hath put in his own power" (Acts 1:7). Those who till now have made such and similar predictions have lied, and their conduct has been in no small measure a detriment to the esteem and work of those who preach well. Wherefore, no cleric, whether regular or secular, who engages in this work in the future is permitted in his sermons to foretell future events *ex litteris sacris* or to affirm that he has received his knowledge of them from the Holy Ghost or through divine revelation or to resort for proof of his statements to foolish divinations, but by divine command it is his duty to preach and explain the Gospel to every creature, to instil a hatred of sin and the cultivation of virtue, and to promote the peace and mutual charity so insistently counseled by our Redeemer. To realize this peace and charity, let him preserve undivided the seamless garment of Christ by abstaining from that scandalous practice of defaming the character of bishops, prelates, and other superiors before the people.

3. The constitution *religiosi* of Clement V,[37] which is hereby approved and renewed, is to be inviolably observed, that those who preach may do so for the benefit of the people and with the help of God win them for heaven, adding another talent to the one they have received from Him, and thus obtain grace and glory.

4. But, if God should by inspiration reveal to some preachers things that will happen in the Church, as He promised through the prophet Amos, and as the Apostle Paul, the prince of preachers, says: "Extinguish not the spirit. Despise not prophecies" (I Thess. 5: 19–20), we do not wish to consign these to the category of fables and lies or otherwise stand in the way of them. But since the matter is of such grave importance, because every spirit is not to be easily believed but according to the Apostle must be proved whether it be from God, we wish that such alleged inspirations be in the future as a rule reserved to the consideration of the Apostolic See before they are published or preached to the people. If this cannot be done without delay or should urgent necessity require another course, then, *eodem ordine servato,* the matter is to be referred to the local ordinary, who, with the aid of three or four learned and prudent men, having carefully examined the matter, may grant permission if they deem it advisable.

5. Those who act in contravention of the above provisions, in addition to the penalties specified by the statutes, incur also the sentence of excommunication from which, except *in mortis articulo,* they can be absolved only by the Roman pontiff. And that by their example others may be deterred from perpetrating similar offenses, we decree that they be forever deprived of the office of preaching.

From the bull *Dum intra mentis arcana* (session XI, December 19, 1516):

To preserve mutual charity and good will between the bishops and prelates on the one hand and the members of the regular orders on the other, and peace and tranquillity in the universal Church, which can be attained only when the jurisdiction of one is not encroached on by the other, we with the approval of the holy council ordain and decree as follows:

1. Bishops may conduct a visitation of the parochial churches in charge of the regulars located within their territorial jurisdiction in all matters that pertain to the *cura animarum* and the administration of the sacraments, without cost however to the orders. Those found to be delinquent they shall punish, if religious, in accordance with the statutes of their order within the conventual enclosure, if secular priests (that is, canons), as if they belong to their jurisdiction.

[37] C. 1, ¶ 1, in Clem., De privileg. et excess., V,7. In the Council of Vienne, second series, canon 16.

2. Secular clergy, not under excommunication, who *devotionis causa* wish to celebrate mass in the churches of the regulars, may do so, and we ask the latter to receive them kindly.

3. The solemn processions held by the bishops at certain times of the year must be attended by the religious chosen by them, provided their monasteries are not located more than one mile from the episcopal city.

4. Religious superiors must present those of their subjects whom they have chosen for hearing confessions to the bishops if these request such presentation, or to the vicar general if the bishop happens to be distant a two days' journey. The bishops may examine those thus presented as to their competency in the matter of hearing confessions and may either accept or reject them according as they see fit.

5. Secular clergy and laymen cannot be absolved by religious *a sententiis ab homine latis.*

6. Neither the sacraments of the Eucharist and extreme unction nor any other sacraments may regulars administer to those whose confessions they have heard, even if they be infirm or dying, unless the *sacerdos proprius* has without legitimate reason refused to administer them, which must be proved by the testimony of neighbors or by a statement made before a notary public. To their servants they may administer the sacraments only so long as they are in their service.

7. Pacts or agreements made between regulars and bishops and parish priests *pro tempore* are valid unless abolished by the following general or provincial chapter and the abolition made duly known.

8. Regulars may not with the cross enter parochial churches for the purpose of taking away the remains of those who have chosen to be buried in their churches or cemeteries, unless notified and requested beforehand by the pastor or when it is known that the pastor does not object, but without detriment to him and to the ordinary, unless they have in their favor an old and undisputed custom.

9. Those who do not live in the monastery but wish to be buried *in habitu fratrum,* may by testamentary direction choose burial in the monastery or its cemetery.

10. Regulars to be promoted to sacred orders may be examined by the bishop and if found qualified may be freely admitted by him. They may not, however, be ordained in their own churches or monasteries or other places belonging to them by a bishop other than the local ordinary or his vicar, unless he should refuse for insufficient reasons or be absent from his diocese.

11. The consecration of churches, altars, and cemeteries, as well as the laying of cornerstones, must be requested by the regulars

from the local ordinary. Only after the latter has declined two or three times without sufficient reason, may they invite another.

12. Regulars may not assist at matrimony without the consent of the pastor.

13. That due honor may be given to the mother-church, neither the regular nor secular clergy, even if privileged in this respect by the Apostolic See, may on Holy Saturday ring their church bells before those of the cathedral or mother church have been rung. Those acting in violation of this incur a penalty of 100 ducats.

14. Censures imposed by the bishops and solemnly published in the cathedral, collegiate, and parochial churches, must be published and observed also in the churches of the regulars when the bishops so request.

15. When hearing the confessions of the faithful, whatever may be their status or condition, regulars should remind them of the obligation of paying their tithes or their equivalent in other goods where it is customary to pay tithes or receive their equivalent, and, in case of refusal, deny them absolution. In their sermons they should make it a point to instruct the people regarding their duty in this matter.

16. The conservators delegated temporarily for religious orders by the Apostolic See must be men distinguished for learning and uprightness and constituted in ecclesiastical dignities, and no one who resides at a distance of more than two days' journey may be compelled by the brethren to appear before them.

17. Excommunicated persons desiring to enter a mendicant order cannot be absolved when the interests of a third party are involved, unless they have first made due satisfaction.

18. Procurators, superintendents, and laborers in the service of the regulars are subject to the sentence of excommunication publicly announced, if they have given cause therefor or if by advice, favor, or otherwise they have aided a guilty party.

19. Brothers and sisters of the third order, the mantellati, corrigiati, pizochatae, chordellati and others by whatever name they are known, living in their own houses, are free to choose their place of burial, but communion on Easter Sunday, extreme unction and the other sacraments, the sacrament of penance excepted, they must receive *a sacerdote proprio*. They are, moreover, bound to all the obligations of laics and may be cited before the secular tribunals.

20. During the time of an interdict the members of the third orders are not to be admitted to the churches of their order to attend divine services if they have been the cause of its imposition or by advice, favor, or otherwise aided the guilty party.

21. Women living in community (*collegialiter*) or in convents with nuns and who have vowed themselves *expresso voto et sub*

dicto habitu to chastity, enjoy the same privileges as the male members of the third order whose habit they wear.

22. The above decrees apply also to the members of all other religious orders and are to be observed by them. Rights of bishops and regulars not expressly mentioned in the above remain unchanged.

TEXT
OF THE
CANONS

CANONES CONCILII NICAENI I (OECUMEN. I)

ANNO 325 HABITI

1. Εἴ τις ἐν νόσῳ ὑπὸ ἰατρῶν ἐχειρουργήθη, ἢ ὑπὸ βαρβάρων ἐξετμήθη, οὗτος μενέτω ἐν τῷ κλήρῳ· εἰ δέ τις ὑγιαίνων ἑαυτὸν ἐξέτεμε, τοῦτον καὶ ἐν τῷ κλήρῳ ἐξεταζόμενον πεπαῦσθαι προσήκει, καὶ ἐκ τοῦ δεῦρο μηδένα τῶν τοιούτων χρῆναι προάγεσθαι· ὥσπερ δὲ τοῦτο πρόδηλον, ὅτι περὶ τῶν ἐπιτηδευόντων τὸ πρᾶγμα καὶ τολμώντων ἑαυτοὺς ἐκτέμνειν εἴρηται· οὕτως εἴ τινες ὑπὸ βαρβάρων ἢ δεσποτῶν εὐνουχίσθησαν, εὑρίσκοιντο δὲ ἄλλως ἄξιοι, τοὺς τοιούτους εἰς κλῆρον προσίεται ὁ κανών.

2. Ἐπειδὴ πολλὰ ἤτοι ὑπὸ ἀνάγκης ἢ ἄλλως ἐπειγομένων τῶν ἀνθρώπων ἐγένετο παρὰ τὸν κανόνα τὸν ἐκκλησιαστικόν, ὥστε ἀνθρώπους ἀπὸ ἐθνικοῦ βίου ἄρτι προσελθόντας τῇ πίστει, καὶ ἐν ὀλίγῳ χρόνῳ κατηχηθέντας εὐθὺς ἐπὶ τὸ πνευματικὸν λουτρὸν ἄγειν, καὶ ἅμα τῷ βαπτισθῆναι προάγειν εἰς ἐπισκοπὴν ἢ πρεσβυτερεῖον· καλῶς ἔδοξεν ἔχειν, τοῦ λοιποῦ μηδὲν τοιοῦτο γίνεσθαι· καὶ γὰρ καὶ χρόνου δεῖ τῷ κατηχουμένῳ, καὶ μετὰ τὸ βάπτισμα δοκιμασίας πλείονος· σαφὲς γὰρ τὸ ἀποστολικὸν γράμμα τὸ λέγον· Μὴ νεόφυτον, ἵνα μὴ τυφωθεὶς εἰς κρίμα ἐμπέσῃ καὶ παγίδα τοῦ διαβόλου. εἰ δὲ προϊόντος τοῦ χρόνου ψυχικόν τι ἁμάρτημα εὑρεθῇ περὶ τὸ πρόσωπον, καὶ ἐλέγχοιτο ὑπὸ δύο ἢ τριῶν μαρτύρων, πεπαύσθω ὁ τοιοῦτος τοῦ κλήρου· ὁ δὲ παρὰ ταῦτα ποιῶν, ὡς ὑπεναντία τῇ μεγάλῃ συνόδῳ θρασυνόμενος, αὐτὸς κινδυνεύσει περὶ τὸν κλῆρον.

3. Ἀπηγόρευσε καθόλου ἡ μεγάλη σύνοδος, μήτε ἐπισκόπῳ μήτε πρεσβυτέρῳ μήτε διακόνῳ μήτε ὅλως τινὶ τῶν ἐν τῷ κλήρῳ ἐξεῖναι συνείσακτον ἔχειν, πλὴν εἰ μὴ ἄρα μητέρα ἢ ἀδελφὴν ἢ θείαν, ἢ ἃ μόνα πρόσωπα πᾶσαν ὑποψίαν διαπέψευγε.

4. Ἐπίσκοπον προσήκει μάλιστα μὲν ὑπὸ πάντων τῶν ἐν τῇ ἐπαρχίᾳ καθίστασθαι· εἰ δὲ δυσχερὲς εἴη τὸ τοιοῦτο, ἢ διὰ κατεπείγουσαν ἀνάγκην ἢ διὰ μῆκος ὁδοῦ, ἐξάπαντος τρεῖς ἐπὶ τὸ αὐτὸ συναγομένους, συμψήφων γινομένων καὶ τῶν ἀπόντων καὶ συντιθεμένων διὰ γραμμάτων, τότε τὴν χειροτονίαν ποιεῖσθαι· τὸ δὲ κῦρος τῶν γινομένων δίδοσθαι καθ' ἑκάστην ἐπαρχίαν τῷ μητροπολίτῃ.

5. Περὶ τῶν ἀκοινωνήτων γενομένων, εἴτε τῶν ἐν τῷ κλήρῳ εἴτε ἐν λαϊκῷ τάγματι, ὑπὸ τῶν καθ' ἑκάστην ἐπαρχίαν ἐπισκόπων κρατείτω ἡ γνώμη κατὰ τὸν κανόνα τὸν διαγορεύοντα, τοὺς ὑφ' ἑτέρων ἀποβληθέντας ὑφ' ἑτέρων μὴ προσίεσθαι. ἐξεταζέσθω δέ, μὴ μικροψυχίᾳ ἢ φιλονεικίᾳ ἤ τινι τοιαύτῃ ἀηδίᾳ τοῦ ἐπισκόπου ἀποσυνάγωγοι γεγένηνται· ἵνα οὖν τοῦτο τὴν πρέπουσαν ἐξέτασιν λαμβάνῃ, καλῶς ἔχειν ἔδοξεν, ἑκάστου ἐνιαυτοῦ καθ' ἑκάστην ἐπαρχίαν δὶς τοῦ ἔτους συνόδους γίνεσθαι, ἵνα κοινῇ πάντων τῶν ἐπισκόπων τῆς ἐπαρχίας ἐπὶ τὸ αὐτὸ συναγομένων, τὰ τοιαῦτα ζητήματα

ἐξετάζοιτο, καὶ οὕτως οἱ ὁμολογουμένως προσκεκρουκότες τῷ ἐπισκόπῳ κατὰ λόγον ἀκοινώνητοι παρὰ πᾶσιν εἶναι δόξωσι, μέχρις ἂν τῷ κοινῷ τῶν ἐπισκόπων δόξῃ τὴν φιλανθρωποτέραν ὑπὲρ αὐτῶν ἐκθέσθαι ψῆφον· αἱ δὲ σύνοδοι γινέσθωσαν, μία μὲν πρὸ τῆς τεσσαρακοστῆς, ἵνα πάσης μικροψυχίας ἀναιρουμένης τὸ δῶρον καθαρὸν προσφέρηται τῷ θεῷ, δευτέρα δὲ περὶ τὸν τοῦ μετοπώρου καιρόν.

6. Τὰ ἀρχαῖα ἔθη κρατείτω τὰ ἐν Αἰγύπτῳ καὶ Λιβύῃ καὶ Πενταπόλει, ὥστε τὸν Ἀλεξανδρείας ἐπίσκοπον πάντων τούτων ἔχειν τὴν ἐξουσίαν, ἐπειδὴ καὶ τῷ ἐν τῇ Ῥώμῃ ἐπισκόπῳ τοῦτο σύνηθές ἐστιν· ὁμοίως δὲ καὶ κατὰ Ἀντιόχειαν καὶ ἐν ταῖς ἄλλαις ἐπαρχίαις τὰ πρεσβεῖα σώζεσθαι ταῖς ἐκκλησίαις· καθόλου δὲ πρόδηλον ἐκεῖνο, ὅτι εἴ τις χωρὶς γνώμης τοῦ μητροπολίτου γένοιτο ἐπίσκοπος, τὸν τοιοῦτον ἡ μεγάλη σύνοδος ὥρισε μὴ δεῖν εἶναι ἐπίσκοπον· ἐὰν μέντοι τῇ κοινῇ πάντων ψήφῳ, εὐλόγῳ οὔσῃ καὶ κατὰ κανόνα ἐκκλησιαστικόν, δύο ἢ τρεῖς δι' οἰκείαν φιλονεικίαν ἀντιλέγωσι, κρατείτω ἡ τῶν πλειόνων ψῆφος.

7. Ἐπειδὴ συνήθεια κεκράτηκε καὶ παράδοσις ἀρχαία, ὥστε τὸν ἐν Αἰλίᾳ ἐπίσκοπον τιμᾶσθαι, ἐχέτω τὴν ἀκολουθίαν τῆς τιμῆς, τῇ μητροπόλει σωζομένου τοῦ οἰκείου ἀξιώματος.

8. Περὶ τῶν ὀνομαζόντων μὲν ἑαυτοὺς Καθαρούς ποτε, προσερχομένων δὲ τῇ καθολικῇ καὶ ἀποστολικῇ ἐκκλησίᾳ, ἔδοξε τῇ ἁγίᾳ καὶ μεγάλῃ συνόδῳ, ὥστε χειροθετουμένους αὐτοὺς μένειν οὕτως ἐν τῷ κλήρῳ· πρὸ πάντων δὲ τοῦτο ὁμολογῆσαι αὐτοὺς ἐγγράφως προσήκει, ὅτι συνθήσονται καὶ ἀκολουθήσουσι τοῖς τῆς καθολικῆς καὶ ἀποστολικῆς ἐκκλησίας δόγμασι· τοῦτ' ἔστι καὶ διγάμοις κοινωνεῖν καὶ τοῖς ἐν τῷ διωγμῷ παραπεπτωκόσιν· ἐφ' ὧν καὶ χρόνος τέτακται, καὶ καιρὸς ὥρισται· ὥστε αὐτοὺς ἀκολουθεῖν ἐν πᾶσι τοῖς δόγμασι τῆς καθολικῆς ἐκκλησίας· ἔνθα μὲν οὖν πάντες, εἴτε ἐν κώμαις, εἴτε ἐν πόλεσιν αὐτοὶ μόνοι εὑρίσκοιντο χειροτονηθέντες, οἱ εὑρισκόμενοι ἐν τῷ κλήρῳ ἔσονται ἐν τῷ αὐτῷ σχήματι· εἰ δὲ τοῦ τῆς καθολικῆς ἐκκλησίας ἐπισκόπου ἢ πρεσβυτέρου ὄντος προσέρχονταί τινες, πρόδηλον, ὡς ὁ μὲν ἐπίσκοπος τῆς ἐκκλησίας ἕξει τὸ ἀξίωμα τοῦ ἐπισκόπου, ὁ δὲ ὀνομαζόμενος παρὰ τοῖς λεγομένοις Καθαροῖς ἐπίσκοπος τὴν τοῦ πρεσβυτέρου τιμὴν ἕξει· πλὴν εἰ μὴ ἄρα δοκοίη τῷ ἐπισκόπῳ, τῆς τιμῆς τοῦ ὀνόματος αὐτὸν μετέχειν· εἰ δὲ τοῦτο αὐτῷ μὴ ἀρέσκοι, ἐπινοήσει τόπον ἢ χωρεπισκόπου ἢ πρεσβυτέρου, ὑπὲρ τοῦ ἐν τῷ κλήρῳ ὅλως δοκεῖν εἶναι, ἵνα μὴ ἐν τῇ πόλει δύο ἐπίσκοποι ὦσιν.

9. Εἴ τινες ἀνεξετάστως προήχθησαν πρεσβύτεροι, ἢ ἀνακρινόμενοι ὡμολόγησαν τὰ ἡμαρτημένα αὐτοῖς, καὶ ὁμολογησάντων αὐτῶν, παρὰ κανόνα κινούμενοι ἄνθρωποι τοῖς τοιούτοις χεῖρα ἐπιτεθείκασι: τούτους ὁ κανὼν οὐ προσίεται. τὸ γὰρ ἀνεπίληπτον ἐκδικεῖ ἡ καθολικὴ ἐκκλησία.

10. Ὅσοι προεχειρίσθησαν τῶν παραπεπτωκότων κατὰ ἄγνοιαν, ἢ καὶ προειδότων τῶν προχειρισαμένων, τοῦτο οὐ προκρίνει τῷ κανόνι τῷ ἐκκλησιαστικῷ· γνωσθέντες γὰρ καθαιροῦνται.

11. Περὶ τῶν παραβάντων χωρὶς ἀνάγκης ἢ χωρὶς ἀφαιρέσεως ὑπαρχόντων ἢ χωρὶς κινδύνου ἤ τινος τοιούτου, ὃ γέγονεν ἐπὶ τῆς τυραννίδος Λικινίου· ἔδοξε τῇ συνόδῳ, κἂν ἀνάξιοι ἦσαν φιλανθρωπίας, ὅμως χρηστεύσασθαι εἰς αὐτούς. ὅσοι οὖν γνησίως μεταμέλονται, τρία ἔτη ἐν ἀκροωμένοις ποιήσουσιν οἱ πιστοὶ καὶ ἑπτὰ ἔτη ὑποπεσοῦνται· δύο δὲ ἔτη χωρὶς προσφορᾶς κοινωνήσουσι τῷ λαῷ τῶν προσευχῶν.

12. Οἱ δὲ προσκληθέντες μὲν ὑπὸ τῆς χάριτος, καὶ τὴν πρώτην ὁρμὴν ἐνδειξάμενοι, καὶ ἀποθέμενοι τὰς ζώνας, μετὰ δὲ ταῦτα ἐπὶ τὸν οἰκεῖον ἔμετον ἀναδραμόντες ὡς κύνες, ὡς τινὰς καὶ ἀργύρια προέσθαι, καὶ βενεφικίοις κατορθῶσαι τὸ ἀναστρατεύσασθαι· οὗτοι δέκα ἔτη ὑποπιπτέτωσαν μετὰ τὸν τῆς τριετοῦς ἀκροάσεως χρόνον· ἐφ' ἅπασι δὲ τούτοις προσήκει ἐξετάζειν τὴν προαίρεσιν, καὶ τὸ εἶδος τῆς μετανοίας. ὅσοι μὲν γὰρ καὶ φόβῳ καὶ δάκρυσι καὶ ὑπομονῇ καὶ ἀγαθοεργίαις τὴν ἐπιστροφὴν ἔργῳ καὶ οὐ σχήματι ἐπιδείκνυνται, οὗτοι πληρώσαντες τὸν χρόνον τὸν ὡρισμένον τῆς ἀκροάσεως, εἰκότως τῶν εὐχῶν κοινωνήσουσι, μετὰ τοῦ ἐξεῖναι τῷ ἐπισκόπῳ, καὶ φιλανθρωπότερόν τι περὶ αὐτῶν βουλεύσασθαι. ὅσοι δὲ ἀδιαφόρως ἤνεγκαν, καὶ τὸ σχῆμα τοῦ εἰσιέναι εἰς τὴν ἐκκλησίαν ἀρκεῖν αὐτοῖς ἡγήσαντο πρὸς τὴν ἐπιστροφήν, ἐξάπαντος πληρούτωσαν τὸν χρόνον.

13. Περὶ δὲ τῶν ἐξοδευόντων ὁ παλαιὸς καὶ κανονικὸς νόμος φυλαχθήσεται καὶ νῦν, ὥστε, εἴ τις ἐξοδεύοι, τοῦ τελευταίου καὶ ἀναγκαιοτάτου ἐφοδίου μὴ ἀποστερεῖσθαι· εἰ δὲ ἀπογνωσθεὶς καὶ κοινωνίας πάλιν τυχών, πάλιν ἐν τοῖς ζῶσιν ἐξετασθῇ, μετὰ τῶν κοινωνούντων τῆς εὐχῆς μόνης ἔστω. καθόλου δὲ καὶ περὶ παντὸς οὑτινοσοῦν ἐξοδεύοντος, αἰτοῦντος τοῦ μετασχεῖν εὐχαριστίας, ὁ ἐπίσκοπος μετὰ δοκιμασίας ἐπιδότω.

14. Περὶ τῶν κατηχουμένων καὶ παραπεσόντων ἔδοξε τῇ ἁγίᾳ καὶ μεγάλῃ συνόδῳ, ὥστε τριῶν ἐτῶν αὐτοὺς ἀκροωμένους μόνον, μετὰ ταῦτα εὔχεσθαι μετὰ τῶν κατηχουμένων.

15. Διὰ τὸν πολὺν τάραχον καὶ τὰς στάσεις τὰς γινομένας ἔδοξε παντάπασι περιαιρεθῆναι τὴν συνήθειαν, τὴν παρὰ τὸν κανόνα εὑρεθεῖσαν ἔν τισι μέρεσιν, ὥστε ἀπὸ πόλεως εἰς πόλιν μὴ μεταβαίνειν μήτε ἐπίσκοπον μήτε πρεσβύτερον μήτε διάκονον. εἰ δέ τις μετὰ τὸν τῆς ἁγίας καὶ μεγάλης συνόδου ὅρον τοιούτῳ τινὶ ἐπιχειρήσειεν, ἢ ἐπιδοίη ἑαυτὸν πράγματι τοιούτῳ, ἀκυρωθήσεται ἐξάπαντος τὸ κατασκεύασμα, καὶ ἀποκατασταθήσεται τῇ ἐκκλησίᾳ, ᾗ ὁ ἐπίσκοπος ἢ ὁ πρεσβύτερος ἐχειροτονήθη.

16. Ὅσοι ῥιψοκινδύνως μήτε τὸν φόβον τοῦ θεοῦ πρὸ ὀφθαλμῶν ἔχοντες, μήτε τὸν ἐκκλησιαστικὸν κανόνα εἰδότες, ἀναχωρήσουσι τῆς ἐκκλησίας, πρεσβύτεροι ἢ διάκονοι ἢ ὅλως ἐν τῷ κανόνι ἐξεταζόμενοι· οὗτοι οὐδαμῶς δεκτοὶ ὀφείλουσιν εἶναι ἐν ἑτέρᾳ ἐκκλησίᾳ, ἀλλὰ πᾶσαν αὐτοῖς ἀνάγκην ἐπάγεσθαι χρή, ἀναστρέφειν εἰς τὰς ἑαυτῶν παροικίας, ἢ ἐπιμένοντας ἀκοινωνήτους εἶναι προσήκει. εἰ δὲ καὶ τολμήσειέ τις ὑφαρπάσαι τὸν τῷ ἑτέρῳ διαφέροντα, καὶ χειροτονῆσαι ἐν τῇ αὐτοῦ ἐκκλησίᾳ,

μὴ συγκατατιθεμένου τοῦ ἰδίου ἐπισκόπου, οὗ ἀνεχώρησεν ὁ ἐν τῷ κανόνι ἐξεταζόμενος, ἄκυρος ἔσται ἡ χειροτονία.

17. Ἐπειδὴ πολλοὶ ἐν τῷ κανόνι ἐξεταζόμενοι τὴν πλεονεξίαν καὶ τὴν αἰσχροκέρδειαν διώκοντες ἐπελάθοντο τοῦ θείου γράμματος λέγοντος· Τὸ ἀργύριον αὐτοῦ οὐκ ἔδωκεν ἐπὶ τόκῳ· καὶ δανείζοντες ἑκατοστὰς ἀπαιτοῦσιν· ἐδικαίωσεν ἡ ἁγία καὶ μεγάλη σύνοδος, ὡς, εἴ τις εὑρεθείη μετὰ τὸν ὅρον τοῦτον τόκους λαμβάνων ἐκ μεταχειρίσεως ἢ ἄλλως μετερχόμενος τὸ πρᾶγμα ἢ ἡμιολίας ἀπαιτῶν ἢ ὅλως ἕτερόν τι ἐπινοῶν αἰσχροῦ κέρδους ἕνεκα, καθαιρεθήσεται τοῦ κλήρου καὶ ἀλλότριος τοῦ κανόνος ἔσται.

18. Ἦλθεν εἰς τὴν ἁγίαν καὶ μεγάλην σύνοδον, ὅτι ἔν τισι τόποις καὶ πόλεσι τοῖς πρεσβυτέροις τὴν εὐχαριστίαν οἱ διάκονοι διδόασιν, ὅπερ οὔτε ὁ κανὼν οὔτε ἡ συνήθεια παρέδωκε, τοὺς ἐξουσίαν μὴ ἔχοντας προσφέρειν τοῖς προσφέρουσι διδόναι τὸ σῶμα τοῦ Χριστοῦ. κἀκεῖνο δὲ ἐγνωρίσθη, ὅτι ἤδη τινὲς τῶν διακόνων καὶ πρὸ τῶν ἐπισκόπων τῆς εὐχαριστίας ἅπτονται. ταῦτα μὲν οὖν ἅπαντα περιῃρήσθω· καὶ ἐμμενέτωσαν οἱ διάκονοι τοῖς ἰδίοις μέτροις, εἰδότες ὅτι τοῦ μὲν ἐπισκόπου ὑπηρέται εἰσί, τῶν δὲ πρεσβυτέρων ἐλάττους τυγχάνουσι· λαμβανέτωσαν δὲ κατὰ τὴν τάξιν τὴν εὐχαριστίαν μετὰ τοὺς πρεσβυτέρους, ἢ τοῦ ἐπισκόπου διδόντος αὐτοῖς ἢ τοῦ πρεσβυτέρου. ἀλλὰ μηδὲ καθῆσθαι ἐν μέσῳ τῶν πρεσβυτέρων ἐξέστω τοῖς διακόνοις· παρὰ κανόνα γὰρ καὶ παρὰ τάξιν ἐστὶ τὸ γινόμενον. εἰ δέ τις μὴ θέλοι πειθαρχεῖν καὶ μετὰ τούτους τοὺς ὅρους, πεπαύσθω τῆς διακονίας.

19. Περὶ τῶν Παυλιανισάντων, εἶτα προσφυγόντων τῇ καθολικῇ ἐκκλησίᾳ, ὅρος ἐκτέθειται, ἀναβαπτίζεσθαι αὐτοὺς ἐξάπαντος· εἰ δέ τινες ἐν τῷ παρεληλυθότι χρόνῳ ἐν τῷ κλήρῳ ἐξητάσθησαν, εἰ μὲν ἄμεμπτοι καὶ ἀνεπίληπτοι φανεῖεν, ἀναβαπτισθέντες χειροτονείσθωσαν ὑπὸ τοῦ τῆς καθολικῆς ἐκκλησίας ἐπισκόπου· εἰ δὲ ἡ ἀνάκρισις ἀνεπιτηδείους αὐτοὺς εὑρίσκοι, καθαιρεῖσθαι αὐτοὺς προσήκει. ὡσαύτως δὲ καὶ περὶ τῶν διακονισσῶν, καὶ ὅλως περὶ τῶν ἐν τῷ κανόνι ἐξεταζομένων, ὁ αὐτὸς τύπος παραφυλαχθήσεται. ἐμνήσθημεν δὲ διακονισσῶν τῶν ἐν τῷ σχήματι ἐξετασθεισῶν, ἐπεὶ μηδὲ χειροθεσίαν τινὰ ἔχουσιν, ὥστε ἐξάπαντος ἐν τοῖς λαϊκοῖς αὐτὰς ἐξετάζεσθαι.

20. Ἐπειδή τινές εἰσιν ἐν τῇ κυριακῇ γόνυ κλίνοντες καὶ ἐν ταῖς τῆς πεντηκοστῆς ἡμέραις· ὑπὲρ τοῦ πάντα ἐν πάσῃ παροικίᾳ φυλάττεσθαι, ἑστῶτας ἔδοξε τῇ ἁγίᾳ συνόδῳ τὰς εὐχὰς ἀποδιδόναι τῷ θεῷ.

CANONES CONCILII CONSTANTINOPOLITANI I (OECUMEN. II)

ANNO 381 HABITI

1. Μὴ ἀθετεῖσθαι τὴν πίστιν τῶν πατέρων τῶν τριακοσίων δεκαοκτώ, τῶν ἐν Νικαίᾳ τῆς Βιθυνίας συνελθόντων, ἀλλὰ μένειν ἐκείνην κυρίαν, καὶ ἀναθεματισθῆναι πᾶσαν αἵρεσιν· καὶ ἰδικῶς τὴν τῶν Εὐνομιανῶν, εἴτουν Ἀνομοίων· καὶ τὴν τῶν Ἀρειανῶν, εἴτουν Εὐδοξιανῶν· καὶ τὴν τῶν Ἡμιαρειανῶν, ἤγουν Πνευματομάχων· καὶ τὴν τῶν Σαβελλιανῶν, Μαρκελλιανῶν, καὶ τὴν τῶν Φωτεινιανῶν, καὶ τὴν τῶν Ἀπολλιναριστῶν.

2. Τοὺς ὑπὲρ διοίκησιν ἐπισκόπους ταῖς ὑπερορίοις ἐκκλησίαις μὴ ἐπιέναι, μηδὲ συγχέειν τὰς ἐκκλησίας· ἀλλὰ κατὰ τοὺς κανόνας τὸν μὲν Ἀλεξανδρείας ἐπίσκοπον τὰ ἐν Αἰγύπτῳ μόνον οἰκονομεῖν, τοὺς δὲ τῆς ἀνατολῆς ἐπισκόπους τὴν ἀνατολὴν μόνην διοικεῖν, φυλαττομένων τῶν ἐν τοῖς κανόσι τοῖς κατὰ Νικαίαν πρεσβείων τῇ Ἀντιοχέων ἐκκλησίᾳ, καὶ τοὺς τῆς Ἀσιανῆς διοικήσεως ἐπισκόπους τὰ κατὰ τὴν Ἀσίαν μόνην οἰκονομεῖν, καὶ τοὺς τῆς Ποντικῆς τὰ τῆς Ποντικῆς μόνον, καὶ τοὺς τῆς Θρᾴκης τὰ τῆς Θρᾳκικῆς μόνον οἰκονομεῖν.

Ἀκλήτους δὲ ἐπισκόπους ὑπὲρ διοίκησιν μὴ ἐπιβαίνειν ἐπὶ χειροτονίαις ἤ τισιν ἄλλαις οἰκονομίαις ἐκκλησιαστικαῖς. φυλαττομένου δὲ τοῦ προγεγραμμένου περὶ τῶν διοικήσεων κανόνος, εὔδηλον ὡς τὰ καθ' ἑκάστην ἐπαρχίαν ἡ τῆς ἐπαρχίας σύνοδος διοικήσει, κατὰ τὰ ἐν Νικαίᾳ ὡρισμένα.

Τὰς δὲ ἐν τοῖς βαρβαρικοῖς ἔθνεσι τοῦ θεοῦ ἐκκλησίας οἰκονομεῖσθαι χρὴ κατὰ τὴν κρατήσασαν συνήθειαν παρὰ τῶν πατέρων.

3. Τὸν μέντοι Κωνσταντινουπόλεως ἐπίσκοπον ἔχειν τὰ πρεσβεῖα τῆς τιμῆς μετὰ τὸν τῆς Ῥώμης ἐπίσκοπον, διὰ τὸ εἶναι αὐτὴν νέαν Ῥώμην.

4. Περὶ Μαξίμου τοῦ Κυνικοῦ καὶ τῆς κατ' αὐτὸν ἀταξίας τῆς ἐν Κωνσταντινουπόλει γενομένης, ὥστε μήτε τὸν Μάξιμον ἐπίσκοπον ἢ γενέσθαι ἢ εἶναι, μήτε τοὺς παρ' αὐτοῦ χειροτονηθέντας ἐν οἱῳδήποτε βαθμῷ κλήρου, πάντων καὶ τῶν περὶ αὐτὸν καὶ τῶν παρ' αὐτοῦ γενομένων ἀκυρωθέντων.

CANONES CONCILII EPHESINI (OECUMEN. III)

ANNO 431 HABITI

1. Εἴ τις ὁ μητροπολίτης τῆς ἐπαρχίας ἀποστατήσας τῆς ἁγίας καὶ οἰκουμενικῆς συνόδου προσέθετο τῷ τῆς ἀποστασίας συνεδρίῳ, ἢ μετὰ τοῦτο προστεθείη, ἢ τὰ Κελεστίου ἐφρόνησεν ἢ φρονήσῃ, οὗτος κατὰ τῶν τῆς ἐπαρχίας ἐπισκόπων διαπράττεσθαί τι οὐδαμῶς δύναται, πάσης ἐκκλησιαστικῆς κοινωνίας ἐντεῦθεν ἤδη ὑπὸ τῆς συνόδου ἐκβεβλημένος καὶ ἀνενέργητος ὑπάρχων· ἀλλὰ καὶ αὐτοῖς τοῖς τῆς ἐπαρχίας ἐπισκόποις καὶ τοῖς πέριξ μητροπολίταις τοῖς τὰ τῆς ὀρθοδοξίας φρονοῦσιν ὑποκείσεται, εἰς τὸ πάντη καὶ τοῦ βαθμοῦ τῆς ἐπισκοπῆς ἐκβληθῆναι.

2. Εἰ δέ τινες ἐπαρχιῶται ἐπίσκοποι ἀπελείφθησαν τῆς ἁγίας συνόδου καὶ τῇ ἀποστασίᾳ προσετέθησαν, ἢ προστεθῆναι πειραθεῖεν, ἢ καὶ ὑπογράψαντες τῇ Νεστορίου καθαιρέσει ἐπαλινδρόμησαν πρὸς τὸ τῆς ἀποστασίας συνέδριον, τούτους πάντη, κατὰ τὸ δόξαν τῇ ἁγίᾳ συνόδῳ, ἀλλοτρίους εἶναι τῆς ἱερωσύνης, καὶ τοῦ βαθμοῦ ἐκπίπτειν.

3. Εἰ δέ τινες καὶ τῶν ἐν ἑκάστῃ πόλει ἢ χώρᾳ κληρικῶν ὑπὸ Νεστορίου καὶ τῶν σὺν αὐτῷ ὄντων τῆς ἱερωσύνης ἐκωλύθησαν διὰ τὸ ὀρθῶς φρονεῖν, ἐδικαιώσαμεν καὶ τούτους τὸν ἴδιον ἀπολαβεῖν βαθμόν. κοινῶς δὲ τοὺς τῇ ὀρθοδόξῳ καὶ οἰκουμενικῇ συνόδῳ συμφρονοῦντας κληρικοὺς κελεύομεν τοῖς ἀποστατήσασιν ἢ ἀφισταμένοις ἐπισκόποις μηδ' ὅλως ὑποκεῖσθαι κατὰ μηδένα τρόπον.

4. Εἰ δέ τινες ἀποστατήσαιεν τῶν κληρικῶν καὶ τολμήσαιεν ἢ κατ' ἰδίαν ἢ δημοσίᾳ τὰ Νεστορίου ἢ τὰ Κελεστίου φρονῆσαι, καὶ τούτους εἶναι καθῃρημένους ὑπὸ τῆς ἁγίας συνόδου δεδικαίωται.

5. Ὅσοι δὲ ἐπὶ ἀτόποις πράξεσι κατεκρίθησαν ὑπὸ τῆς ἁγίας συνόδου ἢ ὑπὸ τῶν οἰκείων ἐπισκόπων, καὶ τούτοις ἀκανονίστως κατὰ τὴν ἐν ἅπασιν ἀδιαφορίαν αὐτοῦ ὁ Νεστόριος καὶ οἱ τὰ αὐτοῦ φρονοῦντες ἀποδοῦναι ἐπειράθησαν ἢ πειραθεῖεν κοινωνίαν ἢ βαθμόν, ἀνωφελήτους μένειν καὶ τούτους, καὶ εἶναι οὐδὲν ἧττον καθῃρημένους ἐδικαιώσαμεν.

6. Ὁμοίως δὲ καὶ εἴ τινες βουληθεῖεν τὰ περὶ ἑκάστων πεπραγμένα ἐν τῇ ἁγίᾳ συνόδῳ τῇ ἐν Ἐφέσῳ οἱῳδήποτε τρόπῳ παρασαλεύειν· ἡ ἁγία σύνοδος ὥρισεν, εἰ μὲν ἐπίσκοποι εἶεν ἢ κληρικοί, τοῦ οἰκείου παντελῶς ἀποπίπτειν βαθμοῦ· εἰ δὲ λαϊκοί, ἀκοινωνήτους ὑπάρχειν.

CANONES CONCILII CHALCEDONENSIS (OECUMEN. IV)

Anno 451 Habiti

1. Τοὺς παρὰ τῶν ἁγίων πατέρων καθ' ἑκάστην σύνοδον ἄχρι τοῦ νῦν ἐκτεθέντας κανόνας κρατεῖν ἐδικαιώσαμεν.

2. Εἴ τις ἐπίσκοπος ἐπὶ χρήμασι χειροτονίαν ποιήσαιτο, καὶ εἰς πρᾶσιν καταγάγῃ τὴν ἄπρατον χάριν, καὶ χειροτονήσῃ ἐπὶ χρήμασιν ἐπίσκοπον ἢ χωρεπίσκοπον ἢ πρεσβύτερον ἢ διάκονον ἢ ἕτερόν τινα τῶν ἐν τῷ κλήρῳ καταριθμουμένων, ἢ προβάλλοιτο ἐπὶ χρήμασιν ἢ οἰκονόμον ἢ ἔκδικον ἢ προσμονάριον ἢ ὅλως τινὰ τοῦ κανόνος δι' αἰσχροκέρδειαν οἰκείαν· ὁ τοῦτο ἐπιχειρήσας ἐλεγχθεὶς περὶ τὸν οἰκεῖον κινδυνευέτω βαθμόν, καὶ ὁ χειροτονούμενος μηδὲν ἐκ τῆς κατ' ἐμπορίαν ὠφελείσθω χειροτονίας ἢ προβολῆς, ἀλλ' ἔστω ἀλλότριος τῆς ἀξίας ἢ τοῦ φροντίσματος οὗπερ ἐπὶ χρήμασιν ἔτυχεν. εἰ δέ τις καὶ μεσιτεύων φανείη τοῖς οὕτως αἰσχροῖς καὶ ἀθεμίτοις λήμμασι, καὶ αὐτος, εἰ μὲν κληρικὸς εἴη, τοῦ οἰκείου ἐκπιπτέτω βαθμοῦ, εἰ δὲ λαϊκὸς ἢ μονάζων, ἀναθεματιζέσθω.

3. Ἦλθεν εἰς τὴν ἁγίαν σύνοδον ὅτι τῶν ἐν τῷ κλήρῳ κατειλεγμένων τινὲς δι' οἰκείαν αἰσχροκέρδειαν ἀλλοτρίων κτημάτων γίνονται μισθωταί, καὶ πράγματα κοσμικὰ ἐργολαβοῦσι, τῆς μὲν τοῦ θεοῦ λειτουργίας καταρρᾳθυμοῦντες, τοὺς δὲ τῶν κοσμικῶν ὑποτρέχοντες οἴκους καὶ οὐσιῶν χειρισμοὺς ἀναδεχόμενοι διὰ φιλαργυρίαν. ὥρισε τοίνυν ἡ ἁγία καὶ μεγάλη σύνοδος, μηδένα τοῦ λοιποῦ μὴ ἐπίσκοπον, μὴ κληρικόν, μὴ μονάζοντα, ἢ μισθοῦσθαι κτήματα ἢ πράγματα, ἢ ἐπεισάγειν ἑαυτὸν κοσμικαῖς διοικήσεσι· πλὴν εἰ μή που ἐκ νόμων καλοῖτο εἰς ἀφηλίκων ἀπαραίτητον ἐπιτροπήν, ἢ ὁ τῆς πόλεως ἐπίσκοπος ἐκκλησιαστικῶν ἐπιτρέψοι φροντίζειν πραγμάτων ἢ ὀρφανῶν καὶ χηρῶν ἀπρονοήτων καὶ τῶν προσώπων τῶν μάλιστα τῆς ἐκκλησιαστικῆς δεομένων βοηθείας διὰ τὸν φόβον τοῦ κυρίου· εἰ δέ τις παραβαίνειν τὰ ὡρισμένα τοῦ λοιποῦ ἐπιχειρήσοι, ὁ τοιοῦτος ἐκκλησιαστικοῖς ὑποκείσθω ἐπιτιμίοις.

4. Οἱ ἀληθῶς καὶ εἰλικρινῶς τὸν μονήρη μετιόντες βίον, τῆς προσηκούσης ἀξιούσθωσαν τιμῆς· ἐπειδὴ δέ τινες τῷ μοναχικῷ κεχρημένοι προσχήματι τάς τε ἐκκλησίας καὶ τὰ πολιτικὰ διαταράττουσι πράγματα, περιϊόντες ἀδιαφόρως ἐν ταῖς πόλεσιν, οὐ μὴν ἀλλὰ καὶ μοναστήρια ἑαυτοῖς συνιστᾶν ἐπιτηδεύοντες· ἔδοξε μηδένα μηδαμοῦ οἰκοδομεῖν μηδὲ συνιστᾶν μοναστήριον ἢ εὐκτήριον οἶκον παρὰ γνώμην τοῦ τῆς πόλεως ἐπισκόπου· τοὺς δὲ καθ' ἑκάστην πόλιν καὶ χώραν μονάζοντας ὑποτετάχθαι τῷ ἐπισκόπῳ καὶ τὴν ἡσυχίαν ἀσπάζεσθαι καὶ προσέχειν μόνῃ τῇ νηστείᾳ καὶ τῇ προσευχῇ, ἐν οἷς τόποις ἐπετάξαντο προσκαρτεροῦντας, μήτε δὲ ἐκκλησιαστικοῖς μήτε βιωτικοῖς παρενοχλεῖν πράγμασιν ἢ ἐπικοινωνεῖν καταλιμπάνοντας τὰ ἴδια μοναστήρια, εἰ μὴ

ποτε ἄρα ἐπιτραπείεν διὰ χρείαν ἀναγκαίαν ὑπὸ τοῦ τῆς πόλεως ἐπισκόπου· μηδένα δὲ προσδέχεσθαι ἐν τοῖς μοναστηρίοις δοῦλον ἐπὶ τῷ μονάσαι παρὰ γνώμην τοῦ ἰδίου δεσπότου. τὸν δὲ παραβαίνοντα τοῦτον ἡμῶν τὸν ὅρον, ὡρίσαμεν ἀκοινώνητον εἶναι, ἵνα μὴ τὸ ὄνομα τοῦ θεοῦ βλασφημῆται. τὸν μέντοι ἐπίσκοπον τῆς πόλεως χρὴ τὴν δέουσαν πρόνοιαν ποιεῖσθαι τῶν μοναστηρίων.

5. Περὶ δὲ τῶν μεταβαινόντων ἀπὸ πόλεως εἰς πόλιν ἐπισκόπων ἢ κληρικῶν ἔδοξε τοὺς περὶ τούτων τεθέντας κανόνας παρὰ τῶν ἁγίων πατέρων ἔχειν τὴν ἰδίαν ἰσχύν.

6. Μηδένα δὲ ἀπολελυμένως χειροτονεῖσθαι μήτε πρεσβύτερον μήτε διάκονον μήτε ὅλως τινὰ τῶν ἐν τῷ ἐκκλησιαστικῷ τάγματι, εἰ μὴ ἰδικῶς ἐν ἐκκλησίᾳ πόλεως ἢ κώμης, ἢ μαρτυρίῳ ἢ μοναστηρίῳ ὁ χειροτονούμενος ἐπικηρύττοιτο. τοὺς δὲ ἀπολύτως χειροτονουμένους ὥρισεν ἡ ἁγία σύνοδος ἄκυρον ἔχειν τὴν τοιαύτην χειροθεσίαν, καὶ μηδαμοῦ δύνασθαι ἐνεργεῖν ἐφ' ὕβρει τοῦ χειροτονήσαντος.

7. Τοὺς ἅπαξ ἐν κλήρῳ κατειλεγμένους ἢ καὶ μονάσαντας ὡρίσαμεν μήτε ἐπὶ στρατείαν μήτε ἐπὶ ἀξίαν κοσμικὴν ἔρχεσθαι· ἢ τοῦτο τολμῶντας καὶ μὴ μεταμελομένους, ὥστε ἐπιστρέψαι ἐπὶ τοῦτο ὃ διὰ θεὸν πρότερον εἵλοντο, αναθεματίζεσθαι.

8. Οἱ κληρικοὶ τῶν πτωχείων καὶ μοναστηρίων καὶ μαρτυρίων ὑπὸ τῶν ἐν ἑκάστῃ πόλει ἐπισκόπων τὴν ἐξουσίαν, κατὰ τὴν τῶν ἁγίων πατέρων παράδοσιν, διαμενέτωσαν, καὶ μὴ καταυθαδιάζεσθαι ἢ ἀφηνιᾶν τοῦ ἰδίου ἐπισκόπου· οἱ δὲ τολμῶντες ἀνατρέπειν τὴν τοιαύτην διατύπωσιν καθ' οἱονδήποτε τρόπον καὶ μὴ ὑποταττόμενοι τῷ ἰδίῳ ἐπισκόπῳ, εἰ μὲν εἶεν κληρικοί, τοῖς τῶν κανόνων ὑποκείσθωσαν ἐπιτιμίοις, εἰ δὲ μονάζοντες ἢ λαϊκοί, ἔστωσαν ἀκοινώνητοι.

9. Εἴ τις κληρικὸς πρὸς κληρικὸν πρᾶγμα ἔχοι, μὴ ἐγκαταλιμπανέτω τὸν οἰκεῖον ἐπίσκοπον καὶ ἐπὶ κοσμικὰ δικαστήρια κατατρεχέτω· ἀλλὰ πρότερον τὴν ὑπόθεσιν γυμναζέτω παρὰ τῷ ἰδίῳ ἐπισκόπῳ, ἤγουν γνώμῃ αὐτοῦ τοῦ ἐπισκόπου παρ' οἷς ἂν τὰ ἀμφότερα μέρη βούλεται τὰ τῆς δίκης συγκροτείσθω. εἰ δέ τις παρὰ ταῦτα ποιήσει, κανονικοῖς ὑποκείσθω ἐπιτιμίοις. εἰ δὲ καὶ κληρικὸς ἔχοι πρᾶγμα πρὸς τὸν ἴδιον ἐπίσκοπον ἢ πρὸς ἕτερον, παρὰ τῇ συνόδῳ τῆς ἐπαρχίας δικαζέσθω. εἰ δὲ πρὸς τὸν τῆς αὐτῆς ἐπαρχίας μητροπολίτην ἐπίσκοπος ἢ κληρικὸς ἀμφισβητοίη, καταλαμβανέτω ἢ τὸν ἔξαρχον τῆς διοικήσεως ἢ τὸν τῆς βασιλευούσης Κωνσταντινουπόλεως θρόνον, καὶ ἐπ' αὐτῷ δικαζέσθω.

10. Μὴ ἐξεῖναι κληρικὸν ἐν δύο πόλεων καταλέγεσθαι ἐκκλησίαις κατὰ τὸ αὐτό, ἐν ᾗ τε τὴν ἀρχὴν ἐχειροτονήθη, καὶ ἐν ᾗ προσέφυγεν, ὡς μείζονι δῆθεν, διὰ δόξης κενῆς ἐπιθυμίαν· τοὺς δέ γε τοῦτο ποιοῦντας ἀποκαθίστασθαι τῇ ἰδίᾳ ἐκκλησίᾳ, ἐν ᾗ ἐξ ἀρχῆς ἐχειροτονήθησαν, καὶ ἐκεῖ μόνον λειτουργεῖν· εἰ μέντοι ἤδη τις μετετέθη ἐξ ἄλλης εἰς ἄλλην ἐκκλησίαν, μηδὲν τοῖς τῆς προτέρας ἐκκλησίας, ἤτοι τῶν ὑπ' αὐτὴν μαρτυρίων ἢ πτωχείων ἢ ξενοδοχείων, ἐπικοινωνεῖν πράγμασι. τοὺς δέ γε τολμῶντας μετὰ τὸν ὅρον τῆς μεγάλης καὶ οἰκουμενικῆς ταύτης συνόδου πράττειν τι τῶν νῦν ἀπηγορευμένων, ὥρισεν ἡ ἁγία σύνοδος, ἐκπίπτειν τοῦ οἰκείου βαθμοῦ.

11. Πάντας τοὺς πένητας καὶ δεομένους ἐπικουρίας μετὰ δοκιμασίας ἐπιστολίοις εἴτουν εἰρηνικοῖς ἐκκλησιαστικοῖς μόνοις ὡρίσαμεν ὁδεύειν καὶ μὴ συστατικοῖς, διὰ τὸ τὰς συστατικὰς ἐπιστολὰς προσήκειν τοῖς οὖσι μόνοις ἐν ὑπολήψει παρέχεσθαι προσώποις.

12. Ἦλθεν εἰς ἡμᾶς ὥς τινες παρὰ τοὺς ἐκκλησιαστικοὺς θεσμοὺς προσδραμόντες δυναστείαις, διὰ πραγματικῶν βασιλικῶν τὴν μίαν ἐπαρχίαν εἰς δύο κατέτεμον, ὡς ἐκ τούτου δύο μητροπολίτας εἶναι ἐν τῇ αὐτῇ ἐπαρχίᾳ. ὥρισε τοίνυν ἡ ἁγία σύνοδος, τοῦ λοιποῦ μηδὲν τοιοῦτον τολμᾶσθαι παρὰ ἐπισκόπῳ, ἐπεὶ τὸν τοῦτο ἐπιχειροῦντα ἐκπίπτειν τοῦ οἰκείου βαθμοῦ· ὅσαι δὲ ἤδη πόλεις διὰ γραμμάτων βασιλικῶν τῷ τῆς μητροπόλεως ἐτιμήθησαν ὀνόματι, μόνης ἀπολαυέτωσαν τῆς τιμῆς καὶ ὁ τὴν ἐκκλησίαν αὐτῆς διοικῶν ἐπίσκοπος, σωζομένων δηλονότι τῇ κατ' ἀλήθειαν μητροπόλει τῶν οἰκείων δικαίων.

13. Ξένους κληρικοὺς καὶ ἀναγνώστας ἐν ἑτέρᾳ πόλει δίχα συστατικῶν γραμμάτων τοῦ ἰδίου ἐπισκόπου μηδ' ὅλως μηδαμοῦ λειτουργεῖν.

14. Ἐπειδὴ ἔν τισιν ἐπαρχίαις συγκεχώρηται τοῖς ἀναγνώσταις καὶ ψάλταις γαμεῖν, ὥρισεν ἡ ἁγία σύνοδος, μὴ ἐξεῖναί τινα αὐτῶν ἑτερόδοξον γυναῖκα λαμβάνειν· τοὺς δὲ ἤδη ἐκ τοιούτων γάμων παιδοποιήσαντας, εἰ μὲν ἔφθασαν βαπτίσαι τὰ ἐξ αὐτῶν τεχθέντα παρὰ τοῖς αἱρετικοῖς, προσάγειν αὐτὰ τῇ κοινωνίᾳ τῆς καθολικῆς ἐκκλησίας· μὴ βαπτισθέντα δέ, μὴ δύνασθαι ἔτι βαπτίζειν αὐτὰ παρὰ τοῖς αἱρετικοῖς· μήτε μὴν συνάπτειν πρὸς γάμον αἱρετικῷ ἢ Ἰουδαίῳ ἢ Ἕλληνι, εἰ μὴ ἄρα ἐπαγγέλλοιτο μετατίθεσθαι εἰς τὴν ὀρθόδοξον πίστιν τὸ συναπτόμενον πρόσωπον τῷ ὀρθοδόξῳ. εἰ δέ τις τοῦτον τὸν ὅρον παραβαίη τῆς ἁγίας συνόδου, κανονικῶς ὑποκείσθω.

15. Διακόνισσαν μὴ χειροτονεῖσθαι γυναῖκα πρὸ ἐτῶν τεσσαράκοντα, καὶ ταύτην μετὰ ἀκριβοῦς δοκιμασίας. εἰ δέ γε δεξαμένη τὴν χειροθεσίαν καὶ χρόνον τινὰ παραμείνασα τῇ λειτουργίᾳ ἑαυτὴν ἐπιδῷ γάμῳ, ὑβρίσασα τὴν τοῦ θεοῦ χάριν, ἡ τοιαύτη ἀναθεματιζέσθω μετὰ τοῦ αὐτῇ συναφθέντος.

16. Παρθένον ἑαυτὴν ἀναθεῖσαν τῷ δεσπότῃ θεῷ, ὡσαύτως δὲ καὶ μονάζοντα μὴ ἐξεῖναι γάμῳ προσομιλεῖν. εἰ δέ γε εὑρεθεῖεν τοῦτο ποιοῦντες, ἔστωσαν ἀκοινώνητοι. ὡρίσαμεν δὲ ἔχειν τὴν αὐθεντίαν τῆς ἐπ' αὐτοῖς φιλανθρωπίας τὸν κατὰ τόπον ἐπίσκοπον.

17. Τὰς καθ' ἑκάστην ἐκκλησίαν ἀγροικικὰς παροικίας ἢ ἐγχωρίους μένειν ἀπαρασαλεύτους παρὰ τοῖς κατέχουσιν αὐτὰς ἐπισκόποις, καὶ μάλιστα εἰ τριακονταετῆ χρόνον ταύτας ἀβιάστως διακατέχοντες ᾠκονόμησαν. εἰ δὲ ἐντὸς τῶν τριάκοντα ἐτῶν γεγένηταί τις ἢ γένηται περὶ αὐτῶν ἀμφισβήτησις, ἐξεῖναι τοῖς λέγουσιν ἠδικῆσθαι, περὶ τούτων κινεῖν παρὰ τῇ συνόδῳ τῆς ἐπαρχίας. εἰ δέ τις παρὰ τοῦ ἰδίου ἀδικοῖτο μητροπολίτου, παρὰ τῷ ἐπάρχῳ τῆς διοικήσεως ἢ τῷ Κωνσταντινουπόλεως θρόνῳ

δικαζέσθω, καθὰ προείρηται. εἰ δέ τις ἐκ βασιλικῆς ἐξουσίας ἐκαινίσθη πόλις ἢ αὖθις καινισθείη, τοῖς πολιτικοῖς καὶ δημοσίοις τύποις καὶ τῶν ἐκκλησιαστικῶν παροικιῶν ἡ τάξις ἀκολουθείτω.

18. Τὸ τῆς συνωμοσίας ἢ φατρίας ἔγκλημα καὶ παρὰ τῶν ἔξω νόμων πάντη κεκώλυται, πολλῷ δὲ μᾶλλον ἐν τῇ τοῦ θεοῦ ἐκκλησίᾳ τοῦτο γίνεσθαι ἀπαγορεύειν προσήκει. εἴ τινες τοίνυν ἢ κληρικοὶ ἢ μονάζοντες εὑρεθεῖεν συνομνύμενοι ἢ φατριάζοντες ἢ κατασκευὰς τυρεύοντες ἐπισκόποις ἢ συγκληρικοῖς, ἐκπιπτέτωσαν πάντη τοῦ οἰκείου βαθμοῦ.

19. Ἦλθεν εἰς τὰς ἡμετέρας ἀκοὰς ὡς ἐν ταῖς ἐπαρχίαις αἱ κεκανονισμέναι σύνοδοι τῶν ἐπισκόπων οὐ γίνονται, καὶ ἐκ τούτου πολλὰ παραμελεῖται τῶν διορθώσεως δεομένων ἐκκλησιαστικῶν πραγμάτων. ὥρισε τοίνυν ἡ ἁγία σύνοδος, κατὰ τοὺς τῶν ἁγίων πατέρων κανόνας δὶς τοῦ ἐνιαυτοῦ ἐπὶ τὸ αὐτὸ συντρέχειν καθ' ἑκάστην ἐπαρχίαν τοὺς ἐπισκόπους, ἔνθα ἂν ὁ τῆς μητροπόλεως ἐπίσκοπος δοκιμάσῃ, καὶ διορθοῦν ἕκαστα τὰ ἀνακύπτοντα· τοὺς δὲ μὴ συνιόντας ἐπισκόπους, ἐνδημοῦντας ταῖς ἑαυτῶν πόλεσι καὶ ταῦτα ἐν ὑγείᾳ διάγοντας καὶ πάσης ἀπαραιτήτου καὶ ἀναγκαίας ἀσχολίας ὄντας ἐλευθέρους, ἀδελφικῶς ἐπιπλήττεσθαι.

20. Κληρικοὺς εἰς ἐκκλησίαν τελοῦντας, καθὼς ἤδη ὡρίσαμεν, μὴ ἐξεῖναι εἰς ἄλλης πόλεως τάττεσθαι ἐκκλησίαν, ἀλλὰ στέργειν ἐκείνην ἐν ᾗ ἐξ ἀρχῆς λειτουργεῖν ἠξιώθησαν, ἐκτὸς ἐκείνων οἵτινες ἀπολέσαντες τὰς ἰδίας πατρίδας ἀπὸ ἀνάγκης εἰς ἄλλην ἐκκλησίαν μετῆλθον. εἰ δέ τις ἐπίσκοπος μετὰ τὸν ὅρον τοῦτον ἄλλῳ ἐπισκόπῳ προσήκοντα δέξεται κληρικόν, ἔδοξεν ἀκοινώνητον εἶναι καὶ τὸν δεχθέντα καὶ τὸν δεξάμενον, ἕως ἂν ὁ μεταστὰς κληρικὸς εἰς τὴν ἰδίαν ἐπανέλθῃ ἐκκλησίαν.

21. Κληρικοὺς ἢ λαϊκοὺς κατηγοροῦντας ἐπισκόπων ἢ κληρικῶν ἁπλῶς καὶ ἀδοκιμάστως μὴ προσδέχεσθαι, εἰ μὴ πρότερον ἐξετασθῇ αὐτῶν ἡ ὑπόληψις.

22. Μὴ ἐξεῖναι κληρικοῖς μετὰ θάνατον τοῦ ἰδίου ἐπισκόπου διαρπάζειν τὰ διαφέροντα αὐτῷ πράγματα, καθὼς καὶ τοῖς πάλαι κανόσιν ἀπηγόρευται· τοὺς δὲ τοῦτο ποιοῦντας κινδυνεύειν εἰς τοὺς ἰδίους βαθμούς.

23. Ἦλθεν εἰς ἀκοὰς τῆς ἁγίας συνόδου ὡς κληρικοί τινες καὶ μονάζοντες, μηδὲν ἐγκεχειρισμένοι ὑπὸ τοῦ ἰδίου ἐπισκόπου, ἔστι δὲ ὅτε ἀκοινώνητοι γενόμενοι παρ' αὐτοῦ, καταλαμβάνοντες τὴν βασιλεύουσαν Κωνσταντινούπολιν ἐπὶ πολὺ ἐν αὐτῇ διατρίβουσι, ταραχὰς ἐμποιοῦντες καὶ θορυβοῦντες τὴν ἐκκλησιαστικὴν κατάστασιν, ἀνατρέπουσί τε οἴκους τινῶν. ὥρισε τοίνυν ἡ ἁγία σύνοδος, τοὺς τοιούτους ὑπομιμνήσκεσθαι μὲν πρότερον διὰ τοῦ ἐκδίκου τῆς κατὰ Κωνσταντινούπολιν ἁγιωτάτης ἐκκλησίας ἐπὶ τῷ ἐξελθεῖν τῆς βασιλευούσης πόλεως· εἰ δὲ τοῖς αὐτοῖς πράγμασιν ἐπιμένοιεν ἀναισχυντοῦντες, καὶ ἄκοντας αὐτοὺς διὰ τοῦ αὐτοῦ ἐκδίκου ἐκβάλλεσθαι καὶ τοὺς ἰδίους καταλαμβάνειν τόπους.

24. Τὰ ἅπαξ καθιερωθέντα μοναστήρια κατὰ γνώμην ἐπισκόπου μένειν εἰς τὸ διηνεκὲς μοναστήρια, καὶ τὰ προσήκοντα αὐτοῖς πράγματα φυλάττεσθαι τῷ μοναστηρίῳ, καὶ μηκέτι δύνασθαι γίνεσθαι ταῦτα κοσμικὰ καταγώγια· τοὺς δὲ συγχωροῦντας τοῦτο γενέσθαι ὑποκεῖσθαι τοῖς ἐκ τῶν κανόνων ἐπιτιμίοις.

25. Ἐπειδή δέ τινες τῶν μητροπολιτῶν, ὡς περιηχήθημεν, ἀμελοῦσι τῶν ἐγκεχειρισμένων αὐτοῖς ποιμνίων καὶ ἀναβάλλονται τὰς χειροτονίας τῶν ἐπισκόπων· ἔδοξε τῇ ἁγίᾳ συνόδῳ ἐντὸς τριῶν μηνῶν γίνεσθαι τὰς χειροτονίας τῶν ἐπισκόπων, εἰ μή ποτε ἄρα ἀπαραίτητος ἀνάγκη παρασκευάσῃ ἐπιταθῆναι τὸν τῆς ἀναβολῆς χρόνον· εἰ δὲ μὴ τοῦτο ποιήσῃ, ὑποκεῖσθαι αὐτὸν κανονικῷ ἐπιτιμίῳ· τὴν μέντοι πρόσοδον τῆς χηρευούσης ἐκκλησίας σώαν φυλάττεσθαι παρὰ τῷ οἰκονόμῳ τῆς ἐκκλησίας.

26. Ἐπειδὴ δὲ ἔν τισιν ἐκκλησίαις, ὡς περιηχήθημεν, δίχα οἰκονόμων οἱ ἐπίσκοποι τὰ ἐκκλησιαστικὰ χειρίζουσι πράγματα, ἔδοξε πᾶσαν ἐκκλησίαν ἐπίσκοπον ἔχουσαν καὶ οἰκονόμον ἔχειν ἐκ τοῦ ἰδίου κλήρου, οἰκονομοῦντα τὰ ἐκκλησιαστικὰ κατὰ γνώμην τοῦ ἰδίου ἐπισκόπου· ὥστε μὴ ἀμάρτυρον εἶναι τὴν οἰκονομίαν τῆς ἐκκλησίας καὶ ἐκ τούτου τὰ τῆς ἐκκλησίας σκορπίζεσθαι πράγματα καὶ λοιδορίαν τῇ ἱερωσύνῃ προστρίβεσθαι· εἰ δὲ μὴ τοῦτο ποιήσῃ, ὑποκεῖσθαι αὐτὸν τοῖς θείοις κανόσι.

27. Τοὺς ἁρπάζοντας γυναῖκας καὶ ἐπ' ὀνόματι συνοικεσίου, ἢ συμπράττοντας ἢ συναινοῦντας τοῖς ἁρπάζουσιν, ὥρισεν ἡ ἁγία σύνοδος, εἰ μὲν κληρικοὶ εἶεν, ἐκπίπτειν τοῦ οἰκείου βαθμοῦ· εἰ δὲ λαϊκοί, ἀναθεματίζεσθαι αὐτούς.

28. Πανταχοῦ τοῖς τῶν ἁγίων πατέρων ὅροις ἑπόμενοι καὶ τὸν ἀρτίως ἀναγνωσθέντα κανόνα τῶν ἑκατὸν πεντήκοντα θεοφιλεστάτων ἐπισκόπων γνωρίζοντες, τὰ αὐτὰ καὶ ἡμεῖς ὁρίζομεν καὶ ψηφιζόμεθα περὶ τῶν πρεσβείων τῆς ἁγιωτάτης ἐκκλησίας Κωνσταντινουπόλεως νέας Ῥώμης. καὶ γὰρ τῷ θρόνῳ τῆς πρεσβυτέρας Ῥώμης, διὰ τὸ βασιλεύειν τὴν πόλιν ἐκείνην, οἱ πατέρες εἰκότως ἀποδεδώκασι τὰ πρεσβεῖα, καὶ τῷ αὐτῷ σκοπῷ κινούμενοι οἱ ἑκατὸν πεντήκοντα θεοφιλέστατοι ἐπίσκοποι τὰ ἴσα πρεσβεῖα ἀπένειμαν τῷ τῆς νέας Ῥώμης ἁγιωτάτῳ θρόνῳ, εὐλόγως κρίναντες, τὴν βασιλείᾳ καὶ συγκλήτῳ τιμηθεῖσαν πόλιν καὶ τῶν ἴσων ἀπολαύουσαν πρεσβείων τῇ πρεσβυτέρᾳ βασιλίδι Ῥώμῃ, καὶ ἐν τοῖς ἐκκλησιαστικοῖς, ὡς ἐκείνην, μεγαλύνεσθαι πράγμασι, δευτέραν μετ' ἐκείνην ὑπάρχουσαν· καὶ ὥστε τοὺς τῆς Ποντικῆς καὶ τῆς Ἀσιανῆς καὶ τῆς Θρᾳκικῆς διοικήσεως μητροπολίτας μόνους, ἔτι δὲ καὶ τοὺς ἐν τοῖς βαρβαρικοῖς ἐπισκόπους τῶν προειρημένων διοικήσεων χειροτονεῖσθαι ἀπὸ τοῦ προειρημένου ἁγιωτάτου θρόνου τῆς κατὰ Κωνσταντινούπολιν ἁγιωτάτης ἐκκλησίας, δηλαδὴ ἑκάστου μητροπολίτου τῶν προειρημένων διοικήσεων μετὰ τῶν τῆς ἐπαρχίας ἐπισκόπων χειροτονοῦντος τοὺς τῆς ἐπαρχίας ἐπισκόπους, καθὼς τοῖς θείοις κανόσι διηγόρευται· χειροτονεῖσθαι δέ, καθὼς εἴρηται, τοὺς μητροπολίτας τῶν προειρημένων διοικήσεων παρὰ τοῦ Κωνσταντινουπόλεως ἀρχιεπισκόπου, ψηφισμάτων συμφώνων κατὰ τὸ ἔθος γενομένων καὶ ἐπ' αὐτὸν ἀναφερομένων.

CANONES CONCILII NICAENI II (OECUMEN. VII)

Anno 787 Habiti

1. Τοῖς τὴν ἱερατικὴν λαχοῦσιν ἀξίαν μαρτύριά τε καὶ κατορθώματα αἱ τῶν κανονικῶν διατάξεών εἰσιν ὑποτυπώσεις· ἃς δεχόμενοι ἀσμένως μετὰ τοῦ θεοφάντορος Δαβὶδ ᾄδομεν πρὸς τὸν δεσπότην θεὸν λέγοντες· Ἐν τῇ ὁδῷ τῶν μαρτυρίων σου ἐτέρφθην, ὡς ἐπὶ παντὶ πλούτῳ· καί· Ἐνετείλω δικαιοσύνην, τὰ μαρτύριά σου εἰς τὸν αἰῶνα· συνέτισόν με, καὶ ζήσομαι. καὶ εἰς τὸν αἰῶνα ἡ προφητικὴ φωνὴ ἐντέλλεται ἡμῖν φυλάττειν τὰ μαρτύρια τοῦ θεοῦ καὶ ζῆν ἐν αὐτοῖς δηλονότι ἀκράδαντα καὶ ἀσάλευτα διαμένουσι, ὅτι καὶ ὁ θεόπτης Μωϋσῆς οὕτω φησίν· Ἐν αὐτοῖς οὐκ ἔστι προσθεῖναι, καὶ ἀπ' αὐτῶν οὐκ ἔστιν ἀφαιρεῖν. καὶ ὁ θεῖος ἀπόστολος ἐν αὐτοῖς ἐγκαυχώμενος βοᾷ· Εἰς ἃ ἐπιθυμοῦσιν ἄγγελοι παρακύψαι. καὶ· Εἰ ἄγγελος εὐαγγελίζηται ὑμῖν παρ' ὃ παρελάβετε, ἀνάθεμα ἔστω. τούτων οὕτως ὄντων καὶ διαμαρτυρουμένων ἡμῖν, ἀγαλλιώμενοι ἐπ' αὐτοῖς, ὡς εἴ τις εὕροι σκῦλα πολλά, ἀσπασίως τοὺς θείους κανόνας ἐνστερνιζόμεθα καὶ ὁλόκληρον τὴν αὐτῶν διαταγὴν καὶ ἀσάλευτον κρατύνομεν, τῶν ἐκτεθέντων ὑπὸ τῶν ἁγίων καὶ σαλπίγγων τοῦ πνεύματος, τῶν πανευφήμων ἀποστόλων, τῶν τε ἓξ ἁγίων καὶ οἰκουμενικῶν συνόδων, καὶ τῶν τοπικῶς συναθροισθεισῶν ἐπὶ ἐκδόσει τοιούτων δογμάτων (1. διαταγμάτων), καὶ τῶν ἁγίων πατέρων ἡμῶν. ἐξ ἑνὸς γὰρ ἅπαντες καὶ τοῦ αὐτοῦ πνεύματος αὐγασθέντες ὥρισαν τὰ συμφέροντα. καὶ οὓς μὲν τῷ ἀναθέματι παραπέμπουσι, καὶ ἡμεῖς ἀναθεματίζομεν· οὓς δὲ τῇ καθαιρέσει, καὶ ἡμεῖς καθαιροῦμεν· οὓς δὲ τῷ ἀφορισμῷ, καὶ ἡμεῖς ἀφορίζομεν· οὓς δὲ ἐπιτιμίῳ παραδιδόασι, καὶ ἡμεῖς ὡσαύτως ὑποβάλλομεν. Ἀφιλάργυρος γὰρ ὁ τρόπος, ἀρκούμενοι τοῖς παροῦσιν, ὁ βεβηκὼς εἰς τρίτον οὐρανὸν καὶ ἀκούσας ἄρρητα ῥήματα Παῦλος ὁ θεῖος ἀπόστολος διαῤῥήδην βοᾷ.

2. Ἐπειδήπερ ψάλλοντες συντασσόμεθα τῷ θεῷ· Ἐν τοῖς δικαιώμασί σου μελετήσω, οὐκ ἐπιλήσομαι τῶν λόγων σου· πάντας μὲν Χριστιανοὺς ταῦτα φυλάττειν σωτήριον, κατ' ἐξαίρετον δὲ τοὺς τὴν ἱερατικὴν ἀμπεχομένους ἀξίαν. ἔνθεν ὁρίζομεν, πάντα τὸν προάγεσθαι μέλλοντα εἰς τὸν τῆς ἐπισκοπῆς βαθμὸν πάντως τὸ ψαλτήριον γινώσκειν, ἵνα ἐκ τούτου καὶ πάντα τὸν κατ' αὐτὸν κλῆρον οὕτω νουθετῇ μυεῖσθαι· ἀνακρίνεσθαι δὲ ἀσφαλῶς ὑπὸ τοῦ μητροπολίτου, εἰ προθύμως ἔχει ἀναγινώσκειν ἐρευνητικῶς καὶ οὐ παροδευτικῶς τούς τε ἱεροὺς κανόνας, τὸ ἅγιον εὐαγγέλιον, τήν τε τοῦ θείου ἀποστόλου βίβλον, καὶ πᾶσαν τὴν θείαν γραφήν, καὶ κατὰ τὰ θεῖα ἐντάλματα ἀναστρέφεσθαι καὶ διδάσκειν τὸν κατ' αὐτὸν λαόν. οὐσία γὰρ τῆς καθ' ἡμᾶς ἱεραρχίας ἐστὶ τὰ θεοπαράδοτα λόγια, εἴτουν ἡ τῶν θείων γραφῶν ἀληθινὴ ἐπιστήμη, καθὼς ὁ μέγας ἀπεφήνατο Διονύσιος. εἰ δὲ ἀμφισβητοίη καὶ μὴ ἀσμενίζοι οὕτω ποιεῖν τε καὶ διδάσκειν, μὴ χειροτονείσθω. ἔφη γὰρ προφητικῶς ὁ θεός· Σὺ ἐπίγνωσιν ἀπώσω, κἀγὼ ἀπώσομαί σε τοῦ μὴ ἱερατεύειν μοι.

3. Πᾶσαν ψῆφον γινομένην παρὰ ἀρχόντων ἐπισκόπου ἢ πρεσβυτέρου ἢ διακόνου ἄκυρον μένειν κατὰ τὸν κανόνα τὸν λέγοντα· Εἴ τις ἐπίσκοπος κοσμικοῖς ἄρχουσι χρησάμενος δι' αὐτῶν ἐγκρατὴς ἐκκλησίας γένηται, καθαιρείσθω καὶ ἀφοριζέσθω καὶ οἱ κοινωνοῦντες αὐτῷ πάντες. δεῖ γὰρ τὸν μέλλοντα προβιβάζεσθαι εἰς ἐπισκοπὴν ὑπὸ ἐπισκόπων ψηφίζεσθαι, καθὼς παρὰ τῶν ἁγίων πατέρων τῶν ἐν Νικαίᾳ ὥρισται ἐν τῷ κανόνι τῷ λέγοντι· [then follows the complete text of the fourth canon of the First Council of Nicaea].

4. Ὁ κήρυξ τῆς ἀληθείας Παῦλος ὁ θεῖος ἀπόστολος οἱονεὶ κανόνα τιθεὶς τοῖς Ἐφεσίων πρεσβυτέροις, μᾶλλον δὲ καὶ παντὶ ἱερατικῷ πληρώματι, οὕτως ἐπαρρησιάσθη εἰπών· Ἀργυρίου ἢ χρυσίου ἢ ἱματισμοῦ οὐδενὸς ἐπεθύμησα, πάντα ὑπέδειξα ὑμῖν, ὅτι κοπιῶντας δεῖ ἀντιλαμβάνεσθαι τῶν ἀσθενούντων, μακάριον ἡγουμένους τὸ διδόναι. διὸ καὶ ἡμεῖς μαθητευθέντες παρ' αὐτοῦ ὁρίζομεν μηδόλως αἰσχροκερδῶς ἐπινοεῖσθαι ἐπίσκοπον, προφασιζόμενον προφάσεις ἐν ἁμαρτίαις, ἀπαιτεῖν χρυσίον ἢ ἄργυρον ἢ ἕτερον εἶδος τοὺς ὑπ' αὐτὸν τελοῦντας ἐπισκόπους ἢ κληρικοὺς ἢ μοναχούς. φησὶ γὰρ ὁ ἀπόστολος· Ἄδικοι βασιλείαν θεοῦ οὐ κληρονομήσουσι. καὶ· Οὐκ ὀφείλει τὰ τέκνα τοῖς γονεῦσι θησαυρίζειν, ἀλλ' οἱ γονεῖς τοῖς τέκνοις. εἴ τις οὖν δι' ἀπαίτησιν χρυσίου ἢ ἑτέρου τινὸς εἴδους εἴτε διά τινα ἰδιοπάθειαν εὑρεθείη ἀπείργων τῆς λειτουργίας καὶ ἀφορίζων τινὰ τῶν ὑπ' αὐτὸν κληρικῶν, ἢ σεπτὸν ναὸν κλείων, μὴ γίνεσθαι ἐν αὐτῷ τὰς τοῦ θεοῦ λειτουργίας, εἰς ἀναίσθητον τὴν ἑαυτοῦ μανίαν ἐπιπέμπων, ἀναίσθητος ὄντως ἐστὶ καὶ τῇ ταὐτοπαθείᾳ ὑποκείσεται, καὶ ἐπιστρέψει ὁ πόνος αὐτοῦ ἐπὶ τὴν κεφαλὴν αὐτοῦ ὡς παραβάτου ἐντολῆς θεοῦ καὶ τῶν ἀποστολικῶν διατάξεων. παραγγέλλει γὰρ καὶ Πέτρος, ἡ κορυφαία τῶν ἀποστόλων ἀκρότης· Ποιμαίνετε τὸ ἐν ὑμῖν ποίμνιον τοῦ θεοῦ μὴ ἀναγκαστῶς, ἀλλ' ἑκουσίως κατὰ θεόν, μὴ αἰσχροκερδῶς, ἀλλὰ προθύμως, μὴ ὡς κατακυριεύοντες τῶν κλήρων, ἀλλὰ τύποι γινόμενοι τοῦ ποιμνίου· καὶ φανερωθέντος τοῦ ἀρχιποιμένος, κομιεῖσθε τὸν ἀμαράντινον τῆς δόξης στέφανον.

5. Ἁμαρτία πρὸς θάνατόν ἐστιν, ὅταν τινὲς ἁμαρτάνοντες ἀδιόρθωτοι μένωσι. τὸ δὲ τούτου χεῖρον, ἐὰν καὶ τραχηλιῶντες κατεξανίστανται τῆς εὐσεβείας καὶ τῆς ἀληθείας, καὶ προτιμώμενοι τὸν μαμωνᾶν τῆς τοῦ θεοῦ ὑπακοῆς καὶ τῶν κανονικῶν αὐτοῦ διατάξεων μὴ ἀντεχόμενοι. διὸ ἐν τούτοις οὐκ ἔστι κύριος ὁ θεός, εἰ μήπου ταπεινωθέντες τοῦ ἰδίου σφάλματος ἀνανήψωσι. χρὴ γὰρ μᾶλλον αὐτοὺς προσέρχεσθαι τῷ θεῷ καὶ μετὰ συντετριμμένης καρδίας τὴν ἄφεσιν τούτου τοῦ ἁμαρτήματος καὶ τὴν συγχώρησιν αἰτεῖσθαι, οὐχὶ ἐναβρύνεσθαι τῇ ἀθέσμῳ δόσει. ἐγγὺς γὰρ κύριος τοῖς συντετριμμένοις τῇ καρδίᾳ. τοὺς οὖν ἐγκαυχωμένους διὰ δόσεως χρυσίου τετάχθαι ἐν τῇ ἐκκλησίᾳ, καὶ ταύτῃ τῇ πονηρᾷ συνηθείᾳ ἐπελπίζοντας τῇ ἀλλοτριούσῃ ἀπὸ τοῦ θεοῦ καὶ πάσης ἱερωσύνης, καὶ ἐκ τούτου ἀναιδεῖ προσώπῳ καὶ ἀπερικαλύπτῳ στόματι ὀνειδιστικοῖς λόγοις τοὺς δι' ἀρετὴν βίου ὑπὸ τοῦ ἁγίου πνεύματος ἐκλεγέντας καὶ καταταγέντας ἐκτὸς δόσεως χρυσίου ἀτιμάζοντας, πρῶτον μὲν τοῦτο ποιοῦντας τὸν ἔσχατον βαθμὸν λαμβάνειν τοῦ οἰκείου τάγματος· εἰ δ' ἐπιμένοιεν, δι' ἐπιτιμίου διορθούσθωσαν. εἰ δέ τις ἐπὶ χειροτονίᾳ φανείη ποτὲ τοῦτο πεποιηκώς,

γινέσθω κατὰ τὸν ἀποστολικὸν κανόνα τὸν λέγοντα· Εἴ τις ἐπίσκοπος διὰ χρημάτων τῆς ἀξίας ταύτης ἐγκρατὴς γένηται ἢ πρεσβύτερος ἢ διάκονος, καθαιρείσθω καὶ αὐτὸς καὶ ὁ χειροτονήσας, καὶ ἐκκοπτέσθω παντάπασι καὶ τῆς κοινωνίας ὡς Σίμων ὁ μάγος ὑπ' ἐμοῦ Πέτρου. ὡσαύτως καὶ κατὰ τὸν δεύτερον κανόνα τῶν ἐν Χαλκηδόνι ὁσίων πατέρων ἡμῶν, λέγοντα· [then follows the complete text of the second canon of Chalcedon].

6. Ἐπειδήπερ κανών ἐστιν ὁ λέγων· δὶς τοῦ ἔτους καθ' ἑκάστην ἐπαρχίαν χρὴ γίνεσθαι διὰ συναθροίσεως ἐπισκόπων τὰς κανονικὰς ζητήσεις, διὰ γοῦν τὴν συντριβὴν καὶ τὸ ἐνδεῶς ἔχειν πρὸς ὁδοιπορίαν τοὺς συναθροιζομένους ὥρισαν οἱ τῆς ἕκτης συνόδου ὅσιοι πατέρες, ἐξ ἅπαντος τρόπου καὶ προφάσεως ἅπαξ τοῦ ἐνιαυτοῦ γίνεσθαι καὶ τὰ ἐσφαλμένα διορθοῦσθαι. τοῦτον οὖν τὸν κανόνα καὶ ἡμεῖς ἀνανεοῦμεν, καὶ εἴ τις εὑρεθῇ ἄρχων τοῦτο κωλύων, ἀφοριζέσθω. εἰ δέ τις ἐκ τῶν μητροπολιτῶν ἀμελήσοι τοῦτο γίνεσθαι, ἐκτὸς ἀνάγκης καὶ βίας καί τινος εὐλόγου προφάσεως, τοῖς κανονικοῖς ἐπιτιμίοις ὑποκείσθω. τῆς δὲ συνόδου γινομένης περὶ κανονικῶν καὶ εὐαγγελικῶν πραγμάτων, δεῖ τοῖς συναθροισθεῖσιν ἐπισκόποις ἐν μελέτῃ καὶ φροντίδι γίνεσθαι τοῦ φυλάττεσθαι τὰς θείας καὶ ζωοποιοὺς ἐντολὰς τοῦ θεοῦ. ἐν γὰρ τῷ φυλάττεσθαι αὐτὰς ἀνταπόδοσις πολλή, ὅτι καὶ λύχνος ἐντολή, νόμος δὲ φῶς, καὶ ὁδὸς ζωῆς ἔλεγχος καὶ παιδεία· καὶ ἡ ἐντολὴ κυρίου τηλαυγὴς φωτίζουσα ὀφθαλμούς. μὴ ἔχειν δὲ ἄδειαν τὸν μητροπολίτην, ἐξ ὧν ἐπιφέρονται οἱ ἐπίσκοποι μετ' αὐτῶν, ἢ κτῆνος ἢ ἕτερον εἶδος ἀπαιτεῖν· εἰ δὲ τοῦτο ἐλεγχθῇ, ἀποτίσει τὸ τετραπλάσιον.

7. Ἔφη Παῦλος ὁ θεῖος ἀπόστολος· Τινῶν αἱ ἁμαρτίαι πρόδηλοί εἰσι, τισὶ δὲ καὶ ἐπακολουθοῦσιν. ἁμαρτιῶν οὖν προκαταλαβουσῶν καὶ ἕτεραι ἁμαρτίαι παρέπονται ταύταις. τῇ οὖν ἀσεβεῖ αἱρέσει τῶν χριστιανοκατηγόρων καὶ ἄλλα ἀσεβήματα συνηκολούθησαν· ὥσπερ γὰρ τὴν τῶν σεπτῶν εἰκόνων ὄψιν ἀφείλοντο ἐκ τῆς ἐκκλησίας, καὶ ἕτερά τινα ἔθη παραλελύκασιν, ἃ χρὴ ἀνανεωθῆναι καὶ κατὰ τὴν ἔγγραφον καὶ ἄγραφον θεσμοθεσίαν οὕτω κρατεῖν. ὅσοι οὖν σεπτοὶ ναοὶ καθιερώθησαν ἐκτὸς ἁγίων λειψάνων μαρτύρων, ὁρίζομεν ἐν αὐτοῖς κατάθεσιν γενέσθαι λειψάνων, μετὰ καὶ τῆς συνήθους εὐχῆς. καὶ εἰ ἀπὸ τοῦ παρόντος τις εὑρεθῇ ἐπίσκοπος χωρὶς ἁγίων λειψάνων καθιερῶν ναόν, καθαιρείσθω, ὡς παραβεβηκὼς τὰς ἐκκλησιαστικὰς παραδόσεις.

8. Ἐπειδὴ πλανώμενοί τινες ἐκ τῆς τῶν Ἑβραίων θρησκείας μυκτηρίζειν ἔδοξαν Χριστὸν τὸν θεὸν ἡμῶν, προσποιούμενοι χριστιανίζειν, αὐτὸν δὲ ἀρνοῦνται, κρύβδην καὶ λαθραίως σαββατίζοντες, καὶ ἕτερα ἰουδαϊκὰ ποιοῦντες, ὁρίζομεν τούτους μήτε εἰς κοινωνίαν μήτε εἰς εὐχὴν μήτε εἰς ἐκκλησίαν δέχεσθαι. ἀλλὰ φανερῶς ἔστωσαν κατὰ τὴν ἑαυτῶν θρησκείαν Ἑβραῖοι· μήτε τοὺς παῖδας αὐτῶν βαπτίζειν, μήτε δοῦλον ὠνήσασθαι ἢ κτᾶσθαι. εἰ δὲ ἐξ εἰλικρινοῦς καρδίας καὶ πίστεως ἐπιστρέψει τις αὐτῶν καὶ ὁμολογήσει ἐξ ὅλης καρδίας, θριαμβεύων τὰ κατ' αὐτῶν ἔθη καὶ πράγματα, πρὸς τὸ καὶ ἄλλους ἐλεγχθῆναι καὶ διορθώσασθαι, τοῦτον προσδέχεσθαι καὶ βαπτίζειν καὶ τοὺς παῖδας αὐτοῦ, καὶ ἀσφαλίζεσθαι αὐτοὺς ἀποστῆναι τῶν ἑβραϊκῶν ἐπιτηδευμάτων. εἰ δὲ μὴ οὕτως ἔχοιεν, μηδαμῶς αὐτοὺς προσδέχεσθαι.

9. Πάντα τὰ μειρακιώδη ἀθύρματα καὶ μανιώδη βακχεύματα, τὰ ψευδοσυγγράμματα κατὰ τῶν σεπτῶν εἰκόνων γενόμενα, δέον δοθῆναι ἐν τῷ ἐπισκοπείῳ Κωνσταντινουπόλεως, ἵνα ἀποτεθῶσι μετὰ λοιπῶν αἱρετικῶν βίβλων. εἰ δέ τις εὑρεθείη ταῦτα κρύπτων, εἰ μὲν ἐπίσκοπος ἢ πρεσβύτερος ἢ διάκονος εἴη, καθαιρείσθω, εἰ δὲ μοναχὸς ἢ λαϊκός, ἀναθεματιζέσθω.

10. Ἐπειδή τινες τῶν κληρικῶν παραλογιζόμενοι τὴν κανονικὴν διάταξιν ἀπολιπόντες τὴν ἑαυτῶν παροικίαν εἰς ἑτέρας παροικίας ἐκτρέχουσι, κατὰ πλεῖστον δὲ ἐν ταύτῃ τῇ θεοφυλάκτῳ καὶ βασιλίδι πόλει, καὶ εἰς ἄρχοντας προσεδρεύουσιν, ἐν τοῖς αὐτῶν εὐκτηρίοις τὰς λειτουργίας ποιοῦντες, τούτους οὖν χωρὶς τοῦ ἰδίου ἐπισκόπου καὶ τοῦ Κωνσταντινουπόλεως οὐκ ἔξεστι δεχθῆναι ἐν οἱῳδήποτε οἴκῳ ἢ ἐκκλησίᾳ· εἰ δὲ τοῦτο ποιήσει, ἐπιμένων καθαιρείσθω. ὅσοι δὲ μετ' εἰδήσεως τῶν προλεχθέντων ἱερέων τοῦτο ποιοῦσιν, οὐκ ἔξεστιν αὐτοῖς κοσμικὰς καὶ βιωτικὰς φροντίδας ἀναλαμβάνεσθαι, ὡς κεκώλυται τοῦτο ποιεῖν παρὰ τῶν θείων κανόνων. εἰ δέ τις φωραθείη τῶν λεγομένων μειζοτέρων φροντίδα ἐπέχων, ἢ παυσάσθω ἢ καθαιρείσθω. μᾶλλον μὲν οὖν ἤτω πρὸς διδασκαλίαν τῶν παίδων καὶ τῶν οἰκετῶν, ἐπαναγινώσκων αὐτοῖς τὰς θείας γραφάς. εἰς τοῦτο γὰρ καὶ τὴν ἱερωσύνην ἐκληρώσατο.

11. Ὑπόχρεοι ὄντες πάντας τοὺς θείους κανόνας φυλάττειν, καὶ τὸν λέγοντα, οἰκονόμους εἶναι ἐν ἑκάστῃ ἐκκλησίᾳ, παντὶ τρόπῳ ἀπαράτρωτον διατηρεῖν ὀφείλομεν. καὶ εἰ μὲν ἕκαστος μητροπολίτης ἐν τῇ ἐκκλησίᾳ αὐτοῦ καθιστᾷ οἰκονόμον, καλῶς ἂν ἔχοι· εἰ δὲ μήγε, ἐξ αὐθεντίας ἰδίας τῷ Κωνσταντινουπόλεως ἐπισκόπῳ ἄδειά ἐστι προχειρίζεσθαι οἰκονόμον ἐν τῇ αὐτοῦ ἐκκλησίᾳ· ὡσαύτως καὶ τοῖς μητροπολίταις, εἰ οἱ ὑπ' αὐτοὺς ἐπίσκοποι οὐ προαιροῦνται οἰκονόμους ἐγκαταστῆσαι ἐν ταῖς ἑαυτῶν ἐκκλησίαις· τὸ αὐτὸ δὲ φυλάττεσθαι καὶ ἐπὶ τῶν μοναστηρίων.

12. Εἴ τις ἐπίσκοπος εὑρεθείη ἢ ἡγούμενος ἐκ τῶν αὐτουργιῶν τοῦ ἐπισκοπείου ἢ τοῦ μοναστηρίου ἐκποιούμενος εἰς ἀρχοντικὴν χεῖρα ἢ καὶ ἑτέρῳ προσώπῳ ἐκδιδούς, ἄκυρον εἶναι τὴν ἔκδοσιν, κατὰ τὸν κανόνα τῶν ἁγίων ἀποστόλων τὸν λέγοντα· "Πάντων τῶν ἐκκλησιαστικῶν πραγμάτων ὁ ἐπίσκοπος ἐχέτω τὴν φροντίδα καὶ διοικείτω αὐτά, ὡς θεοῦ ἐφορῶντος· μὴ ἐξεῖναι δὲ αὐτῷ σφετερίζεσθαί τι ἐξ αὐτῶν ἢ συγγενέσιν ἰδίοις τὰ τοῦ θεοῦ χαρίζεσθαι· εἰ δὲ πένητες εἶεν, ἐπιχορηγείτω ὡς πένησιν, ἀλλὰ μὴ προφάσει τούτων τὰ τῆς ἐκκλησίας ἀπεμπολείτω." εἰ δὲ προφασίζοιντο ζημίαν ἐμποιεῖν καὶ μηδὲν πρὸς ὄνησιν τυγχάνειν τὸν ἀγρόν, μηδ' οὕτως τοῖς κατὰ τόπον ἄρχουσιν ἐκδιδόναι τὸν τόπον, ἀλλὰ κληρικοῖς ἢ γεωργοῖς. εἰ δὲ πανουργίᾳ πονηρᾷ χρήσοιντο καὶ ἐκ τοῦ γεωργοῦ ἢ τοῦ κληρικοῦ ὠνήσηται ἄρχων τὸν ἀγρόν, καὶ οὕτως ἄκυρον εἶναι τὴν πρᾶσιν, καὶ ἀποκαθίστασθαι ἐν τῷ ἐπισκοπείῳ ἢ ἐν τῷ μοναστηρίῳ, καὶ ἐπίσκοπος ἢ ἡγούμενος τοῦτο ποιῶν ἐκδιωχθήτω, ὁ μὲν ἐπίσκοπος τοῦ ἐπισκοπείου, ὁ δὲ ἡγούμενος τοῦ μοναστηρίου, ὡς διασκορπίζων κακῶς ἃ οὐ συνήγαγεν.

13. Ἐπειδὴ διὰ τὴν γενομένην κατὰ τὰς ἁμαρτίας ἡμῶν συμφορὰν ἐν ταῖς ἐκκλησίαις καθηρπάγησάν τινες εὐαγεῖς οἶκοι ὑπό τινων ἀνδρῶν, ἐπισκοπεῖά τε καὶ

μοναστήρια, καὶ ἐγένοντο κοινὰ καταγώγια· εἰ μὲν οἱ διακρατοῦντες ταῦτα προαιροῦνται ἀποδιδόναι, ἵνα κατὰ τὸ ἀρχαῖον ἀποκατασταθῶσιν, εὖ καὶ καλῶς ἔχει· εἰ δὲ μή γε, εἰ μὲν τοῦ καταλόγου τοῦ ἱερατικοῦ εἰσι, τούτους καθαιρεῖσθαι προστάσσομεν, εἰ δὲ μοναχοὶ ἢ λαϊκοί, ἀφορίζεσθαι, ὡς ὄντας κατακρίτους ἀπὸ τοῦ Πατρὸς καὶ τοῦ Υἱοῦ καὶ τοῦ ἁγίου Πνεύματος, καὶ τετάχθωσαν ὅπου ὁ σκώληξ οὐ τελευτᾷ καὶ τὸ πῦρ οὐ σβέννυται, ὅτι τῇ τοῦ κυρίου φωνῇ ἐναντιοῦνται τῇ λεγούσῃ· Μὴ ποιεῖτε τὸν οἶκον τοῦ Πατρός μου οἶκον ἐμπορίας.

14. Ὅτι τάξις ἐμπολιτεύεται ἐν ἱερωσύνῃ, πᾶσιν ἀρίδηλον, καὶ ἐν ἀκριβείᾳ διατηρεῖν τὰς τῆς ἱερωσύνης ἐγχειρίσεις θεῷ ἐστιν εὐάρεστον. καὶ ἐπειδὴ ὁρῶμεν ἐκτὸς χειροθεσίας νηπιόθεν τὴν κουρὰν τοῦ κλήρου λαβόντας τινάς, μήπω δὲ παρ' ἐπισκόπου χειροθεσίαν λαβόντας, καὶ ἀναγινώσκοντας ἐν τῇ συνάξει ἐπ' ἄμβωνος, ἀκανονίστως τοῦτο ποιοῦντας, ἀποτρέπομεν ἀπὸ τοῦ παρόντος τοῦτο μὴ γίνεσθαι· τὸ αὐτὸ δὲ φυλάττεσθαι καὶ ἐπὶ μοναχῶν. ἀναγνώστου δὲ χειροθεσίαν ἄδειά ἐστιν ἐν ἰδίῳ μοναστηρίῳ καὶ μόνον ἑκάστῳ ἡγουμένῳ ποιεῖν, εἰ αὐτῷ τῷ ἡγουμένῳ ἐπετέθη χειροθεσία παρὰ ἐπισκόπου πρὸς προεδρίαν ἡγουμένου, δῆλον ὄντος αὐτοῦ πρεσβυτέρου. ὡσαύτως καὶ κατὰ τὸ ἀρχαῖον ἔθος τοὺς χωρεπισκόπους κατ' ἐπιτροπὴν τοῦ ἐπισκόπου δεῖ προχειρίζεσθαι ἀναγνώστας.

15. Κληρικὸς ἀπὸ τοῦ παρόντος μὴ καταταττέσθω ἐν δυσὶν ἐκκλησίαις· ἐμπορίας γὰρ καὶ αἰσχροκερδείας ἴδιον τοῦτο καὶ ἀλλότριον ἐκκλησιαστικῆς συνηθείας. ἠκούσαμεν γὰρ ἐξ αὐτῆς τῆς κυριακῆς φωνῆς, ὅτι οὐ δύναταί τις δυσὶ κυρίοις δουλεύειν· ἢ γὰρ τὸν ἕνα μισήσει καὶ τὸν ἕτερον ἀγαπήσει, ἢ τοῦ ἑνὸς ἀνθέξεται καὶ τοῦ ἑτέρου καταφρονήσει. ἕκαστος οὖν κατὰ τὴν ἀποστολικὴν φωνήν, ἐν ᾧ ἐκλήθη, ἐν τούτῳ ὀφείλει μένειν, καὶ προσεδρεύειν ἐν μιᾷ ἐκκλησίᾳ· τὰ γὰρ δι' αἰσχροκέρδειαν γινόμενα ἐπὶ τῶν ἐκκλησιαστικῶν πραγμάτων, ἀλλότρια τοῦ θεοῦ καθεστήκασι. πρὸς δὲ τὴν τοῦ βίου τούτου χρείαν ἐπιτηδεύματά εἰσι διάφορα· ἐξ αὐτῶν, εἴ τις βούλοιτο, τὰ χρειώδη τοῦ σώματος ποριζέσθω. ἔφη γὰρ ὁ ἀπόστολος· Ταῖς χρείαις μου καὶ τοῖς οὖσι μετ' ἐμοῦ ὑπηρέτησαν αἱ χεῖρες αὗται. καὶ ταῦτα μὲν ἐν ταύτῃ τῇ θεοφυλάκτῳ πόλει· ἐν δὲ τοῖς ἔξω χωρίοις διὰ τὴν ἔλλειψιν τῶν ἀνθρώπων παραχωρείσθω.

16. Πᾶσα βλακεία καὶ κόσμησις σωματικὴ ἀλλοτρία ἐστὶ τῆς ἱερατικῆς τάξεως· τοὺς οὖν ἑαυτοὺς κοσμοῦντας ἐπισκόπους ἢ κληρικοὺς δι' ἐσθήτων λαμπρῶν καὶ περιφανῶν, τούτους διορθοῦσθαι χρή· εἰ δὲ ἐπιμένοιεν, ἐπιτιμίῳ παραδίδοσθαι· ὡσαύτως καὶ τοὺς τὰ μύρα χριομένους. ἐπειδὴ δὲ ῥίζα πικρίας ἄνω φύουσα μίασμα γέγονεν ἐν τῇ καθολικῇ ἐκκλησίᾳ ἡ τῶν χριστιανοκατηγόρων αἵρεσις, καὶ οἱ ταύτην δεξάμενοι οὐ μόνον τὰς εἰκονικὰς ἀναζωγραφήσεις ἐβδελύξαντο, ἀλλὰ καὶ πᾶσαν εὐλάβειαν ἀπώσαντο, τοὺς σεμνῶς καὶ εὐσεβῶς βιοῦντας προσοχθίζοντες, καὶ πεπλήρωται ἐπ' αὐτοῖς τὸ γεγραμμένον· Βδέλυγμα ἁμαρτωλῷ θεοσέβεια· καὶ εἰ εὑρεθῶσι τοίνυν ἐγγελῶντες τοῖς τὴν εὐτελῆ καὶ σεμνὴν ἀμφίασιν περικειμένοις, δι' ἐπιτιμίου διορθούσθωσαν. ἐκ γὰρ τῶν ἄνωθεν χρόνων πᾶς ἱερατικὸς ἀνὴρ μετὰ μετρίας καὶ σεμνῆς ἀμφιάσεως ἐπολιτεύετο. πᾶν γὰρ ὃ μὴ διὰ χρείαν, ἀλλὰ διὰ καλλωπισμὸν

παραλαμβάνεται, περπερείας ἔχει κατηγορίαν, ὡς ὁ μέγας ἔφη Βασίλειος. ἀλλ' οὐδὲ ἐκ σηρικῶν ὑφασμάτων πεποικιλμένην ἐσθῆτα ἐνεδέδυτό τις, οὐδὲ προσετίθεσαν ἑτερόχροα ἐπιβλήματα ἐν τοῖς ἄκροις τῶν ἱματίων· ἤκουσαν γὰρ ἐκ τῆς θεοφθόγγου γλώσσης, ὅτι οἱ τὰ μαλακὰ φοροῦντες ἐν τοῖς οἴκοις τῶν βασιλέων εἰσίν.

17. Ὅτι τινὲς τῶν μοναχῶν καταλιπόντες τὰ ἑαυτῶν μοναστήρια, ἐφιέμενοι ἄρχειν καὶ τὸ ὑπακούειν ἀναινόμενοι, ἐγχειρίζουσι κτίζειν εὐκτηρίους οἴκους, τὰ πρὸς ἀπαρτισμὸν μὴ ἔχοντες· εἴ τις οὖν τοῦτο ἐπιχειρήσει ποιεῖν, κωλυέσθω ὑπὸ τοῦ κατὰ τὸν τόπον ἐπισκόπου. εἰ δὲ τὰ πρὸς ἀπαρτισμὸν ἔχοι, τὰ βεβουλευμένα αὐτῷ εἰς πέρας ἀγέσθωσαν. τὸ αὐτὸ δὲ φυλάττεσθαι καὶ ἐπὶ λαϊκῶν καὶ κληρικῶν.

18. Ἀπρόσκοποι γίνεσθε καὶ τοῖς ἔξωθεν, φησὶν ὁ θεῖος ἀπόστολος. τὸ δὲ γυναῖκας ἐνδιαιτᾶσθαι ἐν ἐπισκοπείοις ἢ καὶ μοναστηρίοις, παντὸς προσκόμματος αἴτιον. εἴ τις οὖν δούλην ἢ ἐλευθέραν ἐν τῷ ἐπισκοπείῳ κτώμενος φωραθείη ἢ ἐν μοναστηρίῳ πρὸς ἐγχείρησιν διακονίας τινός, ἐπιτιμάσθω· ἐπιμένων δὲ καθαιρείσθω. εἰ δὲ καὶ τύχοι ἐν προαστείοις γυναῖκας εἶναι, καὶ θελήσει ἐπίσκοπος ἢ ἡγούμενος πορείαν ἐν τοῖς ἐκεῖσε ποιήσασθαι, παρόντος ἐπισκόπου ἢ ἡγουμένου, μηδόλως ἐγχείρησιν διακονίας ποιείσθω κατ' ἐκεῖνον τὸν καιρὸν γυνή, ἀλλ' ἰδιαζέτω ἐν ἑτέρῳ τόπῳ, ἕως ἂν τὴν ἐπαναχώρησιν ποιήσωνται ὁ ἐπίσκοπος ἢ ὁ ἡγούμενος, διὰ τὸ ἀνεπίληπτον.

19. Τοσοῦτον κατενεμήθη τῆς φιλαργυρίας τὸ μῦσος εἰς τοὺς ἡγήτορας τῶν ἐκκλησιῶν, ὥστε καί τινας τῶν λεγομένων εὐλαβῶν ἀνδρῶν τε καὶ γυναικῶν, ἐπιλαθομένους τὰς ἐντολὰς τοῦ κυρίου, ἐξαπατηθῆναι καὶ διὰ χρυσίου τὰς εἰσδοχὰς τῶν προσερχομένων τῷ τε ἱερατικῷ τάγματι καὶ τῷ μονήρει βίῳ ποιεῖσθαι. καὶ γίνεται ὧν ἡ ἀρχὴ ἀδόκιμος καὶ τὸ πᾶν ἀπόβλητον, ὥς φησιν ὁ μέγας Βασίλειος· οὐδὲ γὰρ θεῷ καὶ μαμωνᾷ δουλεύειν ἔξεστιν. εἴ τις οὖν εὑρεθείη τοῦτο ποιῶν, εἰ μὲν ἐπίσκοπος ἢ ἡγούμενος ἤ τις τοῦ ἱερατικοῦ, ἢ παυσάσθω ἢ καθαιρείσθω κατὰ τὸν δεύτερον κανόνα τῆς ἐν Χαλκηδόνι συνόδου. εἰ δὲ ἡγουμένη, ἐκδιωχθήτω τοῦ μοναστηρίου καὶ παραδοθήτω ἐν ἑτέρῳ μοναστηρίῳ πρὸς ὑποταγήν. ὡσαύτως καὶ ἡγούμενος μὴ ἔχων χειροτονίαν πρεσβυτέρου. ἐπὶ δὲ τῶν παρὰ γονέων διδομένων δίκην προικῴων τοῖς τέκνοις ἢ ἰδιοκτήτων αὐτῶν πραγμάτων προσαγομένων, ὁμολογούντων τῶν προσαγόντων ταῦτα εἶναι ἀφιερωμένα τῷ θεῷ, ὡρίσαμεν, κἄν τε μείνῃ, κἄν τε ἐξέλθῃ, μένειν αὐτὰ ἐν τῷ μοναστηρίῳ, κατὰ τὴν ὑπόσχεσιν αὐτῶν, εἰ μὴ εἴη αἰτία τοῦ προεστῶτος.

20. Ἀπὸ τοῦ παρόντος ὁρίζομεν μὴ γίνεσθαι διπλοῦν μοναστήριον, ὅτι σκάνδαλον καὶ πρόσκομμα τοῖς πολλοῖς τοῦτο γίνεται. εἰ δέ τινες μετὰ συγγενῶν προαιροῦνται ἀποτάξασθαι καὶ τῷ μονήρει βίῳ κατακολουθεῖν, τοὺς μὲν ἄνδρας δέον ἀπιέναι εἰς ἀνδρῷον μοναστήριον καὶ τὰς γυναῖκας εἰσιέναι ἐν γυναικείῳ μοναστηρίῳ· ἐπὶ τούτῳ γὰρ εὐαρεστεῖται ὁ θεός. τὰ δὲ ὄντα ἕως τοῦ νῦν διπλᾶ κρατείτωσαν, κατὰ τὸν κανόνα τοῦ ἁγίου πατρὸς ἡμῶν Βασιλείου, καὶ κατὰ τὴν διαταγὴν αὐτοῦ οὕτω διατυπούσθωσαν. μὴ διαιτάσθωσαν ἐν ἑνὶ μοναστηρίῳ μοναχοὶ καὶ μονάστριαι· μοιχεία γὰρ μεσολαβεῖ

τῇ συνδιαιτήσει. μὴ ἐχέτω παῤῥησίαν μοναχὸς πρὸς μονάστριαν ἢ μονάστρια πρὸς μοναχὸν ἰδίᾳ προσομιλεῖν· μὴ κοιταζέσθω μοναχὸς ἐν γυναικείῳ μοναστηρίῳ· μηδὲ συνεσθιέτω μονάστρια κατὰ μόνας. καὶ ὅτε τὰ ἀναγκαῖα τοῦ βίου παρὰ τοῦ ἀνδρῴου μέρους πρὸς τὰς κανονικὰς ἀποκομίζονται, ἔξωθεν τῆς πύλης ταῦτα λαμβανέτω ἡ ἡγουμένη τοῦ γυναικείου μοναστηρίου μετὰ γραός τινος μοναστρίας. εἰ δὲ συμβῇ καὶ συγγενῆ τινα θελήσει θεάσασθαι ὁ μοναχός, ἐπὶ παρουσίᾳ τῆς ἡγουμένης ταύτῃ προσομιλείτω διὰ μικρῶν καὶ βραχέων λόγων καὶ συντόμως ἐξ αὐτῆς ἐπαναχωρείτω.

21. Μὴ δεῖν μοναχὸν ἢ μονάστριαν καταλιμπάνειν τὴν οἰκείαν μονὴν καὶ ἐν ἑτέρᾳ ἀπέρχεσθαι. εἰ δὲ συμβῇ τοῦτο, ξενοδοχεῖσθαι αὐτὸν ἀναγκαῖον, προσλαμβάνεσθαι δὲ ἄνευ γνώμης τοῦ ἡγουμένου αὐτοῦ οὐ προσήκει.

22. Θεῷ μὲν τὸ πᾶν ἀνατίθεσθαι καὶ οὐ τοῖς ἰδίοις θελήμασι δουλοῦσθαι μέγα χρῆμα τυγχάνει. Εἴτε γὰρ ἐσθίετε, εἴτε πίνετε, ὁ θεῖος ἀπόστολός φησι, πάντα εἰς δόξαν θεοῦ ποιεῖτε. Χριστὸς οὖν ὁ θεὸς ἡμῶν ἐν τοῖς εὐαγγελίοις αὐτοῦ τὰς ἀρχὰς τῶν ἁμαρτημάτων ἐκκόπτειν προστέταχεν. οὐ γὰρ ἡ μοιχεία μόνον παρ' αὐτοῦ κολάζεται, ἀλλὰ καὶ ἡ κίνησις τοῦ λογισμοῦ πρὸς τὴν τῆς μοιχείας ἐγχείρησιν κατακέκριται, λέγοντος αὐτοῦ· Ὁ ἐμβλέψας γυναικὶ πρὸς τὸ ἐπιθυμῆσαι ἤδη ἐμοίχευσεν αὐτὴν ἐν τῇ καρδίᾳ αὐτοῦ. ἔνθεν οὖν μαθητευθέντες λογισμοὺς ὀφείλομεν καθαίρειν. εἰ γὰρ πάντα ἔξεστιν, ἀλλ' οὐ πάντα συμφέρει, ὡς ἐξ ἀποστολικῆς φωνῆς διδασκόμεθα. ἐπάναγκες οὖν ἐστι παντὶ ἀνδρί, διὰ τὸ ζῆν ἐσθίειν, καὶ οἷς μὲν βίος ἐστὶ γάμου καὶ τέκνων καὶ λαϊκῆς διαθέσεως, ἀναμὶξ ἐσθίειν ἄνδρας καὶ γυναῖκας τῶν ἀδιαβλήτων ἐστί, μόνον τῷ διδόντι τὴν τροφὴν τὴν εὐχαριστίαν προσαγέτωσαν, καὶ μὴ διά τινων θυμελικῶν ἐπιτηδευμάτων εἴτ' οὖν σατανικῶν ᾀσμάτων, κιθαρῶν τε καὶ πορνικῶν λυγισμάτων, οἷς ἐπέρχεται προφητικὴ ἀρά, οὑτωσὶ λέγουσα· Οὐαὶ οἱ μετὰ κιθάρας καὶ ψαλτηρίου τὸν οἶνον πίνοντες, τὰ δὲ ἔργα κυρίου οὐκ ἐμβλέπουσι, καὶ τὰ ἔργα τῶν χειρῶν αὐτοῦ οὐ κατανοοῦσι. καὶ εἴ πού ποτε εἶεν τοιοῦτοι ἐν τοῖς Χριστιανοῖς, διορθούσθωσαν· εἰ δὲ μή γε, κρατείτωσαν ἐπ' αὐτοῖς τὰ παρὰ τῶν πρὸ ἡμῶν κανονικῶς ἐκδοθέντα. οἷς δὲ ὁ βίος ἐστὶν ἡσύχιος καὶ μονότροπος, ὡς συνταξάμενος κυρίῳ τῷ θεῷ ζυγὸν μονήρη ἆραι, καθίσαι τε καὶ σιωπῆσαι. ἀλλὰ μὴν καὶ τοῖς ἱερατικὸν ἐκλεξαμένοις βίον οὐδόλως ἔξεστι κατ' ἰδίαν γυναιξὶ συνεσθίειν, εἰ μή που μετά τινων θεοφόβων καὶ εὐλαβῶν ἀνδρῶν καὶ γυναικῶν, ἵνα καὶ αὐτὴ ἡ συνεστίασις πρὸς κατόρθωσιν πνευματικὴν ἀπάγῃ· καὶ ἐπὶ συγγενῶν δὲ τὸ αὐτὸ ποιείσθω. εἰ δὲ καὶ αὖθις ἐν ὁδοιπορίᾳ συμβῇ τὰ τῆς ἀναγκαίας χρείας μὴ ἐπιφέρεσθαι μοναχὸν ἢ ἱερατικὸν ἄνδρα, καὶ διὰ τὸ ἀναγκαῖον καταλῦσαι βούλεται εἴτε ἐν πανδοχείῳ ἢ καὶ ἐν οἴκῳ τινός, ἄδειαν ἔχειν αὐτὸν τοῦτο ποιεῖν, ὡς τῆς χρείας κατεπειγούσης.

CANONES CONCILII CONSTANTINOPOLITANI IV (OECUMEN. VIII)

ANNIS 869–70 HABITI [1]

Can. 1. Per aequam et regiam divinae justitiae viam inoffense incedere volentes, veluti quasdam lampades semper lucentes, et illuminantes gressus nostros, qui secundum Deum sunt, sanctorum patrum definitiones, et sensus retinere debemus. Quapropter et has ut secunda eloquia secundum magnum et sapientissimum Dionysium arbitrantes et existimantes, et jam de eis cum divino David promtissime canimus: *Mandatum Domini lucidum, illuminans oculos.*[2] Et, *Lucerna pedibus meis lex tua, et lumen semitis meis;*[3] et cum Proverbiatore dicimus: *Mandatum tuum lucidum, et lex tua lux.*[4] Et cum magna voce cum Isaia clamans ad Dominum Deum, *Quia lux praecepta tua sunt super terram.* Luci enim veraciter assimilatae sunt divinorum canonum hortationes et dehortationes, secundum quod discernitur melius a pejori, et expediens, atque proficuum ab eo, quod non expedire, sed obesse dignoscitur. Igitur regulas, quae sanctae Catholicae et Apostolicae ecclesiae tam a sanctis famosissimis apostolis, quam ab orthodoxorum universalibus, necnon et localibus conciliis, vel etiam a quolibet Deiloquo patre ac magistro ecclesiae traditae sunt, servare ac custodire profitemur; his et propriam vitam, et mores regentes, et omnem sacerdotii catalogum, sed et omnes, qui Christiano censentur vocabulo, poenis et damnationibus, et e diverso receptionibus et justificationibus, quae per illas prolatae sunt et definitae subjici canonice decernentes; tenere quippe traditiones, quas accepimus, sive per sermonem, sive per epistolam sanctorum, qui antea fulserunt, Paulus admonet aperte magnus apostolus.

2. *Obedite praepositis vestris, et subjacete illis; ipsi enim pervigilant* pro animabus vestris tamquam rationem reddituri,[5] Paulus magnus apostolus praecipit. Itaque beatissimum Papam Nicolaum tamquam organum S. Spiritus habentes, necnon et sanctissimum Papam Adrianum successorem ejus, definimus atque sancimus etiam omnia, quae ab eis synodice per diversa tempora exposita sunt et promulgata, tam pro defensione ac statu Constantinopolitanorum ecclesiae et summi sacerdotis ejus, Ignatii videlicet sanctissimi patriarchae, quam etiam pro Photii neophyti, et invasoris expulsione, et condemnatione servari semper, et custodiri cum expositis capitulis immutilata pariter et illaesa, et nullum episcoporum aut presbyterorum vel diaconorum, aut quempiam de catalogo clericorum evertere, vel reprobari aliquid horum audere. Quisquis autem post hanc definitionem nostram comprehensus fuerit spernens quidquam capitulorum et decretorum, quae ab illis exposita sunt, siquidem sacerdos fu-

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[1] Ut jam notatum fuit, habemus duplicem hujus concilii canonum textum, graecum videlicet et latinum, cujus prior 14 tantummodo, posterior vero 27 canones continet. Quapropter in sequenti textus latinus exhibetur. Haberi potest hic textus apud Catalani, *Sacrosancta concilia oecumen.*, II, 323–62, et Mansi, XVI, 160–79.

[2] Ps. 18:8.

[3] Ps. 118:105.

[4] Prov. 6:23.

[5] Heb. 13:17.

erit aut clericus, a proprio decidat honore simul et ordine; monachus autem vel laicus, cujuscumque sit dignitatis, segregetur, donec poenitens profiteatur, se conservaturum praedictorum editionem.

3. Sacram imaginem Domini nostri Jesu Christi, et omnium liberatoris et salvatoris aequo honore cum libro sanctorum evangeliorum adorari decernimus. Sicut enim per syllabarum eloquia, quae in libro feruntur, salutem consequuntur omnes, ita per colorum imaginariam operationem, et sapientes et idiotae cuncti ex eo quod in promptu est, perfruuntur utilitate. Quae enim in syllabis sermo, haec et pictura, quae in coloribus est, ut secundum congruentiam rationis, et antiquissimam traditionem propter honorem, quia ad principalia ipsa deferuntur, etiam derivative iconae honorentur et adorentur aeque, ut sanctorum sacer liber evangeliorum, atque typus praetiosae crucis. Si quis ergo non adorat iconam salvatoris Christi, non videat formam ejus quando veniet in gloria paterna glorificari, et glorificare sanctos suos, sed alienus sit a communione ipsius et claritate. Similiter autem et imaginem intemeratae Matris ejus, et Dei genitricis Mariae. Insuper et iconas sanctorum angelorum depingimus, quemadmodum eos figurat verbis divina scriptura; sed et laudabilissimorum apostolorum, prophetarum, martyrum et sanctorum virorum, simul et omnium sanctorum et honoramus et adoramus. Et qui sic se non habent, anathema sint a Patre, et Filio, et Spiritu Sancto.

4. Amorem principatus, utpote quandam malam radicem exortorum in ecclesia scandalorum, radicitus excidentes, eum, qui temere et praevaricatorie ac irregulariter, veluti quidam gravis lupus in Christi ovile insiliit, Photium scilicet, qui mille tumultibus et turbationibus orbem terrae replevit, justo decreto damnamus; promulgantes, numquam fuisse prius, aut nunc esse episcopum, nec eos, qui in aliquo sacerdotali gradu ab eo consecrati vel promoti sunt, manere in eo ad quod provecti sunt. Insuper et eos, qui ab illo consuetas orationes ad praepositurae promotionem susceperunt, ab hujusmodi patrocinio coercemus. Sed et ecclesias, quas, ut putatur tam Photius quam ii, qui ab ipso consecrati sunt, dedicaverunt; vel si commotas mensas stabilierunt, rursus dedicari et inthronizari, atque stabiliri decernimus; omnibus maxime, quae in ipso et ab ipso ad sacerdotalis gradus acceptionem vel damnationem acta sunt, in irritum ductis. Dicit enim universorum Deus per prophetam: *Quia tu scientiam repulisti, et ego repellam te, ne sacerdotio fungaris mihi.*[6] Et, *Oblitus es legem Dei tui, et ego obliviscar filiorum tuorum. Si secundum multitudinem eorum sic peccaverunt mihi, gloriam ipsorum in inhonorantiam ponam; peccata populi comedent, in injustitiis suis accipient animas suas.*[7] Et iterum dicit: *Quia multiplicavit Ephrem altaria in peccatum, facta sunt ei altaria delicta: scribam in ea multitudinem.*[8]

5. Omnem canonicam stabilitatem in ecclesiis semper manere in Christo providere cupientes, renovamus et confirmamus terminos et vacationes, quae olim a sanctis apostolis et beatis patribus nostris editae legem in ecclesia posuerunt, non oportere antistitem promovere quemquam, qui est vel secundum fidem, vel secundum sacerdotalem sortem neophytus, *ne inflatus in judicium incidat, et in laqueum diaboli,*[9] sicut dicit apostolus. Prioribus ergo canonibus concordantes, definimus, neminem de senatoria dignitate, vel mundana conversatione nuper tonsum super intentione, vel

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[6] Osee 4:6.
[7] *Id.*, 4:6–8.
[8] *Id.*, 8:11.
[9] Vide I Tim. 3:6.

expectatione pontificatus, vel patriarchatus honoris, clericum aut monachum factum ad hujusmodi scandere gradum, licet singulos ordines divini sacerdotii plurimum temporis fecisse probetur. Neque enim propter religionem vel amorem Dei, aut propter expectationem transeundi viam virtutum, sed ob amorem gloriae ac principatus tonsus hujusmodi reperitur. Magis autem coercemus hujusmodi, si ab imperatoria dignitate ad hoc compellatur. Si vero qui per nullam suspicionem praedictae concupiscentiae expectationis, sed propter ipsum bonum humilitatis, quae est circa Christum Jesum, abrenuntians mundo, fiat clericus aut monachus, et omnem gradum ecclesiasticum transigent per definita nunc tempora irreprehensibilis inventus extiterit et probatus, ita ut in gradu lectoris annum compleat, in subdiaconi vero duos, sitque diaconus tribus, et presbyter quatuor annis, sic placuit huic sanctae et universali synodo eligi hunc et admitti. Circa hos autem qui religiose morati in ordine clericorum et monachorum, digni judicati sunt pontificatus dignitate pariter et honore, praedictum tempus abbreviamus, nimirum secundum quod episcoporum praelati probaverint, qui per tempora fuerint. Si vero praeter hanc definitionem nostram quisquam ad jam fatum supremum honorem provectus extiterit, reprobetur, et ab omni sacerdotali operatione prorsus abjiciatur, utpote qui extra canones sit promotus.

6. Quoniam quidem apparuit Photius post prolatam contra se justissimam sententiam et damnationem a sanctissimo Papa Nicolao propter nequissimam invasionem Constantinopolitanorum ecclesiae cum aliis malis operibus suis, etiam quosdam nequam et adulatores de plateis et vicis invenisse, et vicarios hos sanctissimarum trium patriarchalium sedium orientis nominasse ac proposuisse, atque cum his ecclesiam malignantium et concilium vanitatis colligens, depositarias accusationes, et crimina contra beatissimum Papam Nicolaum commovisse, et anathema procaciter et audacter contra eum et cunctos communicantes ei saepe promulgasse, quorum quasi monumentorum libros nos quoque vidimus, ab ipso maligno opere ac fallaci dictatione consutos, qui etiam synodice ab igne consumti sunt; hujus rei gratia pro cautela ecclesiastici ordinis anathematizamus quidem primitus praedictum Photium etiam propter hujuscemodi causam; deinde vero et omnem, qui a modo in calliditate fraudulenter egerit, et verbum veritatis adulteraverit et falsos vicarios simulaverit, vel libros dictatus mendacis finxerit et ad propriorum favorem votorum commentatus fuerit, quemadmodum et fortissimus pietatis athleta Martinus sanctissimus Papa Romanus tales synodice pepulit.

7. Quod justum est et juste exequendum Deiloquus Moyses evidenter lege promulgat; cum bonum non sit bonum, nisi secundum rationem efficiatur. Bonum ergo profecto et valde proficuum est sanctas et venerabiles iconas pingere, sed et proximos disciplinas divinae ac humanae sapientiae docere, non autem bonum est, nec omnino proficuum, ab indignis horum aliquod fieri. Hujus rei gratia nequaquam iconas operari in sacris templis, sed neque in quovis loco docere anathematizatos ab hac sancta et universali synodo, definimus et promulgamus usquequo a propria seductione et malitia convertantur. Quisquis ergo post hanc definitionem nostram ad picturae sanctarum imaginum in ecclesiis, aut doctrinae actionem quoquo modo eos admiserit, siquidem clericus fuerit, proprio gradu periclitetur; si vero laicus, separetur, et divinorum mysteriorum communione privetur.

8. *Omnia mihi licent, sed non omnia expediunt, omnia mihi licent, sed non omnia aedificant,*[10] dicit alicubi Paulus magnus apostolus. Igitur quoniam omnia ad utilitatem et perfectionem sanctae Dei ecclesiae, et nihil omnino per contentionem vel inanem

[10] Vide I Cor. 6:12.

gloriam facere debemus; et quoniam auditibus nostris fama sonuit, quod non solum haeretici et ii, qui sanctae Constantinopolitanorum ecclesiae sacerdotium sunt sortiti, sed et orthodoxi ac legitimi patriarchae a sacerdotali catalogo propriae manus scripta facere ad propriam tutelam, favoremque suum et quasi stabilitatem exigant et compellant; visum est sanctae huic et universali synodo nequaquam id ex hoc quopiam fieri, excepto eo, quod secundum formam et consuetudinem pro sincera fide nostra tempore consecrationis episcoporum exigitur. Quod enim aliter fit, omnino non expedit, sed neque ad aedificationem ecclesiae pertinet. Quisquis ergo ausus fuerit solvere hanc definitionem nostram, aut expetierit, aut paruerit expetentibus, honore proprio decidat.

9. Variam et diversam malitiam antiquitus in ecclesia Constantinopolitana infelix operatus est Photius. Didicimus enim, quod et multum ante tyrannicum praesidatum propriae manus subscriptionibus muniebat adhaerentes sibi clientes ad discendam sapientiam, quae a Deo stulta facta est, cum manifeste nova esset inventio, et sanctis patribus nostris et magistris ecclesiae penitus aliena. Igitur quoniam omnem colligationem iniquitatis solvere, et chirographa violentorum contractuum dirumpere praecipimus, definivit sancta et universalis synodus, neminem ex his omnibus a nunc tale tenere vel servare chirographum, sed absque quolibet offendiculo indubitanter et intrepide tam docere, quam discere omnes, qui ad utrumque consistunt idonei, praeter eos, qui erroris inveniuntur, et haereticae impietatis servituti redacti; hujusmodi enim certissime et docere et discere interdicimus. Si quis autem deprehensus fuerit hanc definitionem nostram spernens atque praevaricans, si quidem clericus est, a proprio gradu decidat, laicus vero sequestretur; utpote qui non credit Dominico verbo prohibenti: *Quodcumque ligaveris super terram, erit ligatum et in coelis; et quodcumque solveris super terram, erit solutum et in coelis.*[11]

10. Divina manifesto clamante scriptura, *Ante examinationem ne vituperes; et intellige primum, et tunc increpa;* *et numquid lex nostra judicat hominem, nisi prius audierit ab eo, et cognoverit, quid faciat?*[12] Juste et congruenter, et haec sancta et universalis synodus definit et statuit, quod nullus laicorum vel monachorum aut aliquis ex catalogo clericorum ante diligentem examinationem, et synodicam sententiam a communione se separet proprii patriarchae, licet criminalem quamlibet causam ejus se nosse praetendat; sed neque recuset nomen ipsius referre inter divina mysteria vel officia. Similiter autem episcopos et presbyteros, qui in exterioribus civitatibus et regionibus sunt, erga proprios metropolitas affectare mandamus. Quod etiam circa patriarcham suum facere metropolitas oportet. Si vero quis adversus hanc sanctam synodum deprehensus fuerit agere, si quidem episcopus aut clericus est, ab omni sacerdotali operatione decidat et honore; monachus autem aut laicus segregetur ab omni ecclesiastica communione atque collegio, quousque conversus ad poenitentiam recipiatur.

11. Veteri et novo Testamento unam animam rationabilem et intellectualem habere hominem docente, et omnibus Deiloquis patribus et magistris ecclesiae eandem opinionem asseverantibus, in tantum impietatis, quidam malorum inventionibus dantes operam, devenerunt, ut duas eum habere animas, impudenter dogmatizare, et quibusdam irrationabilibus conatibus per sapientiam, quae stulta facta est, propriam haeresim confirmare pertentent. Itaque sancta haec et universalis synodus veluti quoddam pessimum zizanium, nunc germinantem nequam opinionem evellere festinans, immo vero ventilabrum in manu veritatis portans, et igni inextinguibili transmittere omnem paleam

[11] Matt. 18:18.
[12] Joan. 7:51.

et aream Christi mundam exhibere volens, talis impietatis inventores et patratores et his similia sentientes, magna voce anathematizat, et definit atque promulgat, neminem prorsus habere vel servare quoquo modo statuta hujus impietatis auctorum. Si autem quis contraria gerere praesumserit huic sanctae et magnae synodo, anathema sit, et a fide atque cultura Christianorum alienus.

12. Apostolicis et synodicis canonibus promotiones et consecrationes episcoporum, et potentia et praeceptione principum factas penitus interdicentibus concordantibus, definimus, et sententiam nos quoque proferimus, ut si quis episcopus per versutiam vel tyrannidem principum hujusmodi dignitatis consecrationem susceperit, deponatur omnimodis, utpote qui non ex voluntate Dei et ritu ac decreto ecclesiastico, sed ex voluntate carnalis sensus ex hominibus, et per homines Dei donum possidere voluit vel consensit.

13. Quoniam quidem dicit alicubi divinum eloquium, *Dignus est operarius mercede sua;*[13] hujus rei gratia et nos decernimus et promulgamus, ut magnae ecclesiae clerici, qui in subjectis ordinibus morati sunt, ad majores gradus ascendant, et si digni claruerint, melioribus perfrui mereantur honoribus; cum aliqui eorum, qui in ipsis sunt, aut per incrementum ad superiora ministeria advocati fuerint, aut per communem naturae terminum dormientes defuerint; sed non ex illis qui foris sunt, aliqui se his innectentes, debitas eis, qui multo tempore laboraverunt, dignitates vel honores recipiant; ac per hoc inveniantur ecclesiae clerici nullo modo posse proficere. Nullatenus autem habeant potestatem, qui principum domorum, seu suburbanarum rerum curam gesserint, inter clerum magnae ecclesiae colligi, vel constitui: *Nemo quippe Deo militans saeculi negotiis implicatur.*[14] Si vero quis praeter definitionem, quam nunc protulimus, promotus fuerit in quocumque magnae ecclesiae gradu, tamquam qui contra magnam synodum provectus extiterit.

14. Eos, qui a divina gratia ad episcopale advocantur officium tamquam imaginem et figuram ferentes sanctorum caelestium hierarchicarum, id est, angelorum, secundum hierarchicum plane gradum et morem, omni honore dignos ab omnibus principibus et subditis sancimus haberi. Et nequaquam strategis vel quibuslibet aliis principibus obvios procul ab ecclesiis suis occurrere, sed neque semet a multo spatio de equis vel mulis ejicere, aut cum timore ac tremore procedere et adorare; sed nec cum saecularibus principibus ad mensam intrare hora prandii, eosdem, quos illi honores strategis exhibentes, sed secundum congruentiam spiritalis dignitatis ac honoris sui reddere quidem omnibus debita, cui vectigal, vectigal, cui honorem, honorem; praeferri autem, et multam, a principibus amicorum Christi imperatorum venerationem et reverentiam promoveri confessores eorum, et honoris similis existentes; ita ut fiduciam habeant episcopi arguere strategos multoties, et alios principes, atque omnem saeculi dignitatem, cum injustum et irrationabile agere quid illos invenerint, et per hoc corrigere et reddere meliores. Si vero aliquis episcopus post definitionem sanctam synodi, debitum et canonice collatum sibi contemserit honorem, et quid secundum veterem et inhumanam, ac inordinatam consuetudinem, praeter quae nunc definita sunt, fieri permiserit, sequestretur anno uno, et principes ille non mereatur percipere mysteriorum, nec sanctificationum communionem.

15. Apostolicos et paternos canones renovans sancta haec et universalis synodus definivit, neminem prorsus episcopum vendere, vel utcumque alienare cimilia et vasa

[13] Luc. 10:7.
[14] Vide II Tim. 2:4.

sacra, excepta causa olim ab antiquis canonibus ordinata, videlicet, quae accipiuntur in redemtionem captivorum. Sed nec tradere salaria ecclesiarum in emphyteutica pacta, nec alias rusticas possessione venundare, ac per hoc ecclesiasticos redditus laedere, quos ad propriam utilitatem, et ob escam pauperum et peregrinorum sustentationem esse decernimus. Omnem vero ecclesiasticarum rerum potestatem habentem, et has meliorare ac dilatare, prout oportuerit ecclesiastica loca, per quae redditus fiunt; et insuper propriarum rerum dispositionem distribuere ac committere, seu conferre quibuscumque voluerit, et judicaverit juxta propriam potestatem ac dominatum. Quisquis autem apparuerit post hanc definitionem nostram contrarium quid huic sanctae et universali synodo agere, deponatur, ut praevaricator divinarum rerum, et praeceptorum, cassata videlicet omnino, quae facta est in scriptis vel sine scriptis ab episcopo venditione vel emphyteutica traditione, vel alia quavis alienatione, cimiliorum scilicet, ac salariorum locorum. Qui vero emerit aut perceperit aliquid ex praedictis cimiliis, vel salariis, et non restituerit ecclesiae iterum quae ecclesiae sunt, vel non reddiderit ad incidendum chartam venditionis, vel emphyteuseos, sit anathema, usque dum fecerit, quod ab hac sancta et universali synodo confirmatum est. Si autem episcopus convictus fuerit construxisse monasterium de redditibus ecclesiasticis tradat ipsum eidem ecclesiae monasterium, si vero de propriis rebus, aut de aliis quibusdam conventionibus, habeat id secundum propriam potestatem et voluntatem omni vita sua, et post finem vitae dimittat et conferat hoc quibuscumque voluerit, non tamen saeculare diversorium fiat.

16. Magnis ululatibus et multis lacrymis dignum opus a multis fidelibus ad nostros pervenit auditus; aiunt enim, fuisse quosdam laicos sub eo, qui nuper imperavit, in ordine senatorio, qui secundum diversam imperatoriam dignitatem videbantur capillorum comam circumplexam involvere, atque reponere, et gradum quasi sacerdotalem per quaedam indusia et vestimenta sacerdotalia sumere, et ut putabatur, episcopos constituere, superhumeralibus, id est, palliis circumamictos, et omnem aliam pontificalem indutos stolam, qui etiam proprium patriarcham adscribentes eum, qui in adinventionibus risum moventibus praelatus et princeps erat; et insultabant et illudebant quibusque divinis, modo quidem electiones, promotiones et consecrationes, modo autem acute calumnias, damnationes et depositiones episcoporum quasi ab invicem, et perinvicem miserabiliter et praevaricatorie agentes et patientes. Talis autem actio nec apud gentes a saeculo unquam audita est, ita ut pejores et miserabiliores infidelibus nationibus exhibeat, et demonstret hos, quos nunc manifestos effecimus, qua de re sancta et universalis synodus definivit et promulgavit, illos quidem malitiae nixus omnino ut scelestos abominari, neminem autem fidelium, qui Christiana censentur appellatione, deinceps conari tale quid faciendi vel admittendi, aut silentio tegendi quemquam eorum, qui hujusmodi operantur impietatem. Si vero quispiam imperator, vel potentum, aut magnatum taliter illudere divinis, ac talem ac tantam injuriam impie in divinum sacerdotium facere, vel admittere tentaverit, primo quidem arguatur a patriarcha illius temporis, et episcopis, qui cum ipso fuerint, et segregetur et indignus divinis mysteriis judicetur; deinde vero accipiat quosdam alios in duram observationem labores et poenas, quae visae fuerint; et nisi celeriter se poeniteat, etiam anathema sit ab sancta et universali synodo, tamquam qui sincerae et immaculatae fidei mysterium dehonestaverit. Si vero praesumentibus quibusdam hujusmodi nefas operari, patriarcha Constantinopolitanus et suffraganei ejus episcopi quod factum fuerit, cognoscentes, neglexerint debitum adversus eos ostendere zelum, deponantur et a proprio sacerdotio ac honore pellantur. Qui autem quoquo modo hujusmodi ministraverunt, vel ministraturi sunt impiissime actioni, et minime confessi acceperint conveniens epitimium, definimus per triennium sequestratos esse, anno quidem uno extra ecclesiam flentes, alio vero anno intra ecclesiam stare usque ad

catechumenos, porro tertio consistere cum fidelibus, et ita dignos fieri mysteriorum sanctificationibus.

17. Sancta et universalis Nicaena synodus prima antiquam consuetudinem jubet servari per Aegyptum et provincias, quae sub ipsa sunt, ita ut horum omnium Alexandrinus episcopus habeat potestatem, dicens: "Quia et in Romanorum civitate hujusmodi mos praevaluit." Qua pro causa et haec magna et sancta synodus tam in seniori et nova Roma, quam in sede Antiochiae et Hierosolymorum priscam consuetudinem decernit in omnibus conservari, ita ut earum praesules universorum metropolitanorum, qui ab ipsis promoventur, et sive per manus impositionem, sive per pallii dationem episcopalis dignitatis firmitatem accipiunt, habeant potestatem, videlicet ad convocandum eos, urgente necessitate ad synodalem conventum, vel etiam ad coercendum illos et corrigendum, cum fama eos super quibusdam delictis forsitan accusaverit. Sed quoniam sunt quidam metropolitanorum, qui ne secundum vocationem Apostolici praesulis occurrant, a mundi principibus se detineri, sine ratione causantur, placuit talem excusationem omnimodis esse invalidum. Cum enim princeps pro suis causis conventus frequenter agat, impium est ut summos praesules ad synodos pro ecclesiasticis negotiis celebrandum impediant, vel quosdam a conciliis eorum prohibeant, licet tale impedimentum et fictam prohibitionem metropolitanorum suggestione diversis modis fieri didicerimus. Consueverunt autem metropolitani bis in anno synodos facere, ideoque sicut dicunt ad patriarchale penitus non posse concurrere caput. Sed sancta haec et universalis synodus, nec concilia quae a metropolitanis fiunt, interdicens, multo magis illa novit rationabiliora esse, ac utiliora metropolitanorum conciliis, quae a patriarchali sede congregantur, et idcirco haec fieri exigit; a metropolita quippe unius quidem provinciae dispositio efficitur; a patriarcha vero saepe totius causa dioeceseos dispensatur. Ac per hoc communis utilitas providetur, propter quod et speciale lucrum propter generale bonum postponi convenit, cum a majoribus super haec facta fuerit advocatio. Quamvis apud quosdam metropolitanorum antiqua consuetudo et canonica traditio per contemtum ipsorum postposita videantur, non currentibus eis ad communem profectum, quos leges ecclesiae severe condemnantes, omni excusatione remota, subjacere vocationibus proprii patriarchae, sive cum communiter sive cum sigillatim factae fuerint, exigunt. Illud autem tamquam perosum quiddam ab auribus nostris repulimus, quod a quibusdam imperitis dicitur, non posse synodum absque principali praesentia celebrari, cum nusquam sacri canones convenire saeculares principes in conciliis sanxerint, sed solos antistites; unde nec interfuisse illos synodis, exceptis conciliis universalibus, invenimus. Neque enim fas est, saeculares principes, spectatores fieri rerum, quae sacerdotibus Dei nonnumquam eveniunt. Quisquis ergo metropolitanorum proprium patriarcham contemserit, et vocationem ejus, quae sive ad unum solum, sive ad plures, sive ad omnes fit, absque validissima aegrotatione, vel paganorum incursu, non obedierit, et per totos duos menses post notitiam vocationis ad proprium venire patriarcham minime festinaverit, vel si quocumque modo latitare, aut non cognoscere nuntium ab illo missum tentaverit, segregetur; si vero intra unum annum eandem contumaciam et inobedientiam demonstraverit, deponatur omnibus modis et ab omni sacerdotali operatione decidat, atque a dignitate et honore, qui metropolitanis convenit, propellatur. Is autem, qui huic definitioni non obedierit, etiam et anathema sit.

18. Placuit huic sanctae et magnae synodo, ut res vel privilegia, quae Dei ecclesiis ex longa consuetudine pertinent, et sive a divinae recordationis imperatoribus, sive ab aliis Dei cultoribus in scriptis vel sine scriptis donata, et ab eis per annos triginta possessa sunt, nequaquam a potestate praesulis earum quaecumque persona saecularis per

potestatem subtrahat, aut per argumenta quaelibet, auferat; sed sint omnia in potestate ac usu praesulis quaecumque intra triginta spatium annorum ab ecclesiis possessa fuisse noscuntur. Quisquis ergo saecularium contra praesentem definitionem egerit, tanquam sacrilegus judicetur, et donec se correxerit et ecclesiae propria privilegia seu res restituerit et reservaverit, anathema sit.

19. Avaritiam, utpote secundam idololatriam Paulus magnus execratur Apostolus, cunctos videlicet, qui Christiano vocabulo censentur, ab omni turpi lucro abstinere volens. Multo magis ergo iis, qui sacerdotio funguntur, nefas est, coepiscopos et suffraganeos suos per quemcumque modum gravare. Hujus rei gratia definivit sancta haec et universalis synodus, nullum archiepiscoporum aut metropolitanorum relinquere propriam ecclesiam, et sub occasione quasi visitationis ad alias accedere, et potestate propria in inferiores abuti, et consumere redditus, qui apud illos inveniuntur ad ecclesiasticam dispositionem, et alimenta pauperum, ac per hoc aggravare avaritiae modo conscientias fratrum et comministrorum nostrorum, excepta hospitalitate, quae aliquando ex necessario transitu fortasse accesserit; sed et tunc non alia, nisi ex iis, quae ad praesens de compendio praeparata inveniuntur, cum reverentia et cum timore Dei dignanter accipiat, et maturius propositum iter perambulet, nihil omnino eorum, quae sunt ecclesiae illius vel suffraganei episcopi, petens et exigens. Si enim unumquemque episcoporum ecclesiae propriae rebus cum multa parcitate uti, et nullatenus in proprias utilitates importune ac sine ratione dispendere, vel consumere redditus ecclesiasticos sacri canones decernunt; qua putas impietate judicabitur dignus, qui aliis episcopis commissas ecclesias gravare vel ambire et per hoc sacrilegii crimen incidere non formidat? Quisquis ergo post hanc definitionem nostram tale quid facere tentaverit, poenam subeat a patriarcha, qui per tempus fuerit, secundum congruentiam injustitiae ac avaritiae suae, et deponatur et sequestretur, ut sacrilegus, et aliter, ut idololatra factus juxta magnum apostolum.

20. Et hoc sancta synodus didicit, quod in quibusdam locis quidam propria usi auctoritate, ac sine voluntate illorum, quibus hujusmodi dispositiones commissae sunt, audacter et tyrannice pellunt eos, qui per emphyteusim perceperint aliquid ex iis locis, quae possederunt, occasione quasi ruptae fidei circa pensionis pactum. Non autem licet omnimodis hoc fieri, nisi prius accipiat protestationem per quosdam idoneos et fideles homines is, qui emphyteusim contraxit; quod nisi dederit usque ad tres annos destinatum tributum sensus, propellatur a locis a se detentis. Oportet enim post trium annorum census retentionem accedere ad praepositos urbis, vel regionis illius, et arguere in conspectu eorum eum, qui emphyteusim consecutus est, et exhibere contemtum ejus, et tunc sententia et judicio praedictorum recipiat ecclesia propria in possessionem. Sed nequaquam quispiam apud se, vel per se faciat praedictorum ablationem locorum; suspectivum quippe tale, quin et multi turpis lucri et avaritiae consistit indicium. Si quis ergo episcopus aut metropolita praeter hanc definitionem nostram abstulerit aliquem locum a quoquam, putans, quod ecclesiam propriam defendat, sequestretur a proprio patriarcha per aliquod tempus, dans primo quod per potestatem suam abstulit vel subripuit. Si vero contentiosus quis persititerit, non obediens his, quae sanctae ac universali synodo visa sunt, deponatur omnimodis.

21. Dominicum sermonem, quem Christus sanctis apostolis et discipulis suis dixit, *Qui vos recipit, me recipit, et qui vos spernit, me spernit,*[15] ad omnes etiam, qui post eos secundum ipsos facti sunt summi pontifices et pastorum principes in ecclesia Catholica, dictum esse credentes, definimus, neminem prorsus mundi potentium quem-

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[15] Luc. 10:16.

quam eorum, qui patriarchalibus sedibus praesunt, inhonorare aut movere a proprio throno tentare, sed omni reverentia et honore dignos judicare; praecipue quidem sanctissimum Papam senioris Romae, deinceps autem Constantinopoleos patriarcham, deinde vero Alexandriae, ac Antiochiae, atque Hierosolymorum; sed nec alium quemcumque conscriptiones contra sanctissimum Papam senioris Romae, ac verba complicare et componere sub occasione quasi diffamatorum quorundam criminum; quod et nuper Photius fecit, et multo ante Dioscorus. Quisquis autem tanta jactantia et audacia usus fuerit, ut secundum Photium vel Dioscorum, in scriptis vel sine scriptis injurias quasdam contra sedem Petri apostolorum principis moveat, aequalem et eandem quam illi, condemnationem recipiat. Si vero quis aliqua saeculi potestate fruens, vel potens pellere tentaverit praefatum Apostolicae Cathedrae Papam, aut aliorum patriarcharum quemquam, anathema sit. Porro si synodus universalis fuerit congregata, et facta fuerit etiam de sancta Romanorum ecclesia quaevis ambiguitas et controversia, oportet venerabiliter et cum convenienti reverentia de proposita quaestione sciscitari, et solutionem accipere, aut proficere, aut profectum facere, non tamen audacter sententiam dicere contra summos senioris Romae pontifices.

22. Promotiones atque consecrationes episcoporum concordans prioribus conciliis, electione et decreto episcoporum collegii fieri sancta haec et universalis synodus definit et statuit, atque jure promulgat, neminem laicorum principum vel potentum semet inserere electioni, vel promotioni patriarchae, vel metropolitae, aut cujuslibet episcopi, ne videlicet inordinata hinc, et incongrua fiat confusio vel contentio, praesertim cum nullam in talibus potestatem quemquam, potestativorum, vel caeterorum laicorum habere conveniat, sed potius silere, ac attendere sibi usquequo regulariter a collegio ecclesiastico suscipiat finem electio futuri pontificis. Si vero quis laicorum ad concertandum et cooperandum ab ecclesia invitatur, licet hujusmodi cum reverantia, si forte voluerit, obtemperare se asciscentibus; taliter enim sibi dignum pastorem regulariter ad ecclesiae suae salutem promoveat. Quisquis autem saecularium principum et potentum, vel alterius dignitatis laicus adversus communem ac consonantem, atque canonicam electionem ecclesiastici ordinis agere tentaverit, anathema sit, donec obediat, ac consentiat, quod ecclesia de electione ac ordinatione proprii praesulis se velle monstraverit.

23. Venit et hoc nunc ad aures nostras, quod quidam episcoporum a quibusdam rogati possessiones, quae ad alias ecclesias pertinent, irrationabiliter conferant, et per hoc, quantum possunt, ad propriam voluntatem in aliorum potestatem episcoporum usurpent. Hoc autem et propheticam illis manifeste maledictionem acquiret, quae dixit: *Vae qui conjungitis domum ad domum, et agrum ad agrum, ut proximo auferatis aliquid;* [16] et criminis eos sacrilegii reos constituit. Hujus rei gratia placuit magnae huic et universali synodo, quod nullus fratrum et coepiscoporum nostrorum, vel quisquam talem sibi facere nequissimam locationem roget, vel ab aliquo ipse rogatus quamlibet alienarum et extranearum conferat ecclesiarum possessionem; nec etiam constituat presbyteros, aut quemlibet alium clericum in ecclesiis, quae sibi subjectae non sunt, praeter voluntatem episcopi, cui ecclesia illa commissa est. Sed neque quisquam presbyterorum vel diaconorum, qui sacris officiis dediti sunt, ultra ac per se ecclesias ingrediens, sacrum aliquid operetur, in quibus ab initio sortem minime consequutus est; illicitum enim est hoc et omnimodis a canonicis praeceptionibus alienum. Quisquis ergo post hanc definitionem nostram visus fuerit faciens aliquid horum, quae nunc interdicta sunt, separetur aliquo indicto tempore, discisso videlicet, et dirupto modis omnibus locatorio pacto, quod cum scripto sive sine scripto, praeter canonem factum est. Similiter et presbyter

[16] Isai. 5:8.

ille, vel diaconus segregatus sit, donec ab aliena recedat ecclesia. Quod si et segregationem contemserit, modis omnibus deponatur et ab omni honore sacrato dejiciatur.

24. Divina scriptura dicente, *Maledictus omnis homo, qui facit opus Domini negligenter*, quidam metropolitanorum in extremam negligentiam, et desidiam delapsi, praeceptionibus suis subjectos ad se adducunt episcopos, et committunt eis ecclesiae propriae divina officia et litanias et cuncta omnino sacra, quae ad se pertinent ministeria, ita ut per illos celebrent omnia, quae per semet alacriter agere debuerint, ac per id eos, qui episcopalem dignitatem meruerunt, quodammodo clericos sibi subjectos exhibeant. Vacant autem iidem praeter ecclesiasticas leges saecularibus curis, atque dispositionibus, dimittentes perseverare in orationibus et observationibus pro suis delictis, ac populi ignorantiis, quod nusquam apud aliquos penitus invenitur, cum sit canonicis nimirum contrarium omnino praeceptis, et quod saevius est, quia suis stipendiis per distinctas mensium vices praecipi dicuntur praedicta perficere ministeria, quod ab Apostolico munimine modis omnibus ostenditur alienum. Haec autem omnia magnis, et multis, ac vehementissimis damnationibus dignos hujusmodi statuunt; probantur enim tales per haec, quae faciunt, etiam satanica jactantia et superbia languere. Quisquis ergo metropolitanorum post hanc sanctae ac universalis synodi definitionem, eadem audacia vel superbia et contemtu abusus, non per se cum timore et alacritate, seu conscientia bona, debita ministeria in propria civitate, sed per suffraganeos episcopos suos efficere tentaverit, poenas exolvat coram proprio patriarcha, et aut corrigatur aut deponatur.

25. Et hoc debite sancta synodus definivit, quatenus episcopi, presbyteri, diaconi et subdiaconi magnae ecclesiae, qui consecrationem Methodii et Ignatii sanctissimorum patriarcharum habuerunt, et secundum insolens illud, et durissimum cor Pharaonis obdurati sunt, et usque nunc minime cum hac sancta et universali synodo convenerunt, sed nec nobis consonare in verbo veritatis voluerunt, quinimo invasori Photio concorditer consenserunt, depositi sint et omnino sacerdotali operatione privati, quemadmodum nec multum ante beatissimus Papa Nicolaus judicavit, nequaquam tales in sacerdotii catalogo recipiantur, etiamsi ex hoc converti voluerint, nisi in perceptione sanctificationum, qua dignos nullatenus eos, nisi per multam misericordiam judicamus; non enim sunt digni ad priorem honorem restitutionis locum per poenitentiam invenire, secundum exosum illum Esau, licet cum lacrymis expetiisset eam.

26. Placuit et de hoc sanctae synodo, ut quicumque presbyter, aut diaconus a proprio episcopo depositus fuerit propter aliquod crimen, vel si quamlibet injustitiam se pati dixerit, et non acquieverit judicio proprii epscopi, dicens eum suspectum se habere, et vel propter inimicitiam, quam erga se tenuerit, vel propter gratiam, quam aliis quibusdam praestare voluerit, iccirco in se fuisse tale quid operatum, potestatem habeat ad metropolitam ipsius provinciae concurrere, et eam, quam putat injustam, depositionem vel aliam laesionem denunciare; metropolita vero ille libenter suscipiat hujuscemodi, et advocet episcopum, qui deposuit, vel alio modo clericum laesit, et apud se cum aliis etiam episcopis negotii faciat examen, ad confirmandam scilicet sine omni suspicione, vel destruendum per generalem synodum et multorum sententia clerici depositionem. Similiter etiam episcopos concurrere ad patriarchale caput decernimus, qui a metropolitis suis talia se pertulisse fatentur, ut apud patriarcham metropolitarum, qui sub ipso sunt, justam, et sine suspicione sententiam, quod movetur negotium, accipiat. Insuper etiam nullo modo quisquis metropolitanorum vel episcoporum a vicinis metropolitis provinciae suae judicetur, licet quidam incurrisse crimina perhibeatur, sed a solo patriarcha proprio judicetur, cujus sententiam rationabilem, et judicium justum, ac sine suspicione fore decernimus, eo quod apud eum honorabiliores quique colligantur, ac

per hoc ratum et firmum penitus sit, quod ab ipso fuerit judicatum. Si quis autem non acquieverit iis, quae a nobis edita sunt, excommunicatus existat.

27. Secundum traditas formas per singulas provincias, ac regiones, et urbes in ecclesiasticis promotionibus et consecrationibus, illa, quae indicia et signa sunt ordinis, qui unicuique inesse videtur, retineri decernimus, ita ut episcopi, quibus concessum est palliis uti certis temporibus, in eisdem temporibus et locis iis induantur, et tanto et tali non abutantur amictu propter typhum et inanem gloriam et humanum placorem, atque sui amorem, omni videlicet tempore divini sacrificii, et omnis alius ecclesiastici mysterii hunc inepte portantes. Illos autem, qui reverenter monasticam vitam sectati sunt, et episcopalem meruerunt honorem, conservare schema, et amictum monachicorum indumentorum, et ipsam beatam vitam decernimus, et nullus omnino habeat potestatem deponere jam dictum schema propter typhum, et arrogantem voluntatem, ne per hoc inveniatur propriorum transgressor pactorum. Sicut enim ibi continuus palliorum amictus fastigiosum, et suae gloriae deditum demonstrat episcopum, ita et hic depositio, ac denudatio monachici habitus nihilominus eisdem submittit criminibus eum, qui hoc fecisse captus extiterit. Quisquis ergo episcopus praeter definita sibi scripto tempora se pallio induerit, aut monasticarum vestium schema deposuerit, aut corrigatur, aut a patriarcha proprio deponatur.

CANONES CONCILII LATERANENSIS I (OECUMEN. IX)

ANNO 1123 HABITI [1]

Can. 1. Sanctorum patrum exempla sequentes et officii nostro debito innovantes, ordinari quemquam per pecuniam in ecclesia Dei vel promoveri, auctoritate sedis apostolicae modis omnibus prohibemus. Si quis vero in ecclesia ordinationem vel promotionem taliter acquisierit, acquisita prorsus dignitate careat. (C. 10, C. 1, q. 1.)

2. Nullus in praepositum, nullus in archipresbyterum, nullus in decanum, nisi presbyter; nullus in archidiaconum, nisi diaconus, ordinetur. (C. 2, d. LX.)

3. Presbyteris, diaconibus vel subdiaconibus concubinarum et uxorum contubernia penitus interdicimus et aliarum mulierum cohabitationem, praeter quas synodus Nicaena propter solas necessitudinum causas habitare permisit, videlicet matrem, sororem, amitam, vel materteram, aut alias hujusmodi, de quibus nulla valeat juste suspicio oriri.

4. Praeterea juxta beatissimi Stephani papae sanctionem statuimus, ut laici, quamvis religiosi sint, nullam tamen de ecclesiasticis rebus aliquid disponendi habeant facultatem; sed secundum apostolorum canones omnium negotiorum ecclesiasticorum curam episcopus habeat et ea velut Deo contemplante dispenset. Si quis ergo principum aut laicorum aliorum dispensationem vel donationem rerum sive possessionum ecclesiasticarum sibi vindicaverit, ut sacrilegus puniatur.

5. Conjunctiones consanguineorum fieri prohibemus, quoniam eas et divinae et saeculi prohibent leges. Leges enim divinae hoc agentes et eos, qui ex eis prodeunt, non solum ejiciunt, sed maledictos appellant; leges vero saeculi infames tales (eos) vocant et ab hereditate repellunt. Nos itaque, patres nostros sequentes, infamia eos notamus et infames esse censemus.

6. Ordinationes quae a Burdino haeresiarcha, postquam a Romana ecclesia est damnatus, quaeque a pseudoepiscopis per eum postea ordinatis factae sunt, irritas esse decernimus.

7. Nullus omnino archidiaconus, aut archipresbyter, aut praepositus, vel decanus animarum curam vel praebendas ecclesiae sine judicio vel consensu episcopi alicui tribuat; imo, sicut sanctis canonibus constitutum est, animarum cura et rerum ecclesiasticarum dispensatio in episcopi judicio permaneat. Si quis vero contra hoc facere, aut potestatem quae ad episcopum pertinet, sibi vindicare praesumpserit, ab ecclesiae liminibus arceatur. (C. 11, C. XVI, q. 7.)

8. Ad haec sanctae Romanae ecclesiae possessiones quietas servare per Dei gratiam cupientes, praecipimus et sub districtione anathematis interdicimus, ne aliqua militaris

[1] Mansi, XXI, 282–86; Hefele-Leclercq, V, 631–38.

persona Beneventum, beati Petri civitatem, praesumat invadere aut violenter retinere. Si quis aliter praesumpserit, anathematis vinculo teneatur.

9. A suis episcopis excommunicatos, ab aliis episcopis, abbatibus et clericis in communionem recipi procul dubio prohibemus.

10. Nullus in epicopum nisi canonice electum ad consecrandum manus mittat. Quod si praesumpserit, et consecratus et consecrator absque recuperationis spe deponatur. (C.3, d.LXII.)

11. Eis qui Hierosolymam proficiscuntur et ad christianam gentem defendendam et tyrannidem infidelium debellandam efficaciter auxilium praebuerint, suorum peccatorum remissionem concedimus, et domos, et familias, atque omnia bona eorum in beati Petri et Romanae ecclesiae protectione, sicut a Domino nostro papa Urbano statutum fuit, suscipimus. Quicumque ergo ea distrahere vel auferre, quamdiu in via illa morantur, praesumpserint, excommunicationis ultione plectantur. Eos autem qui pro Hierosolymitano vel Hispanico itinere cruces sibi in vestibus posuisse noscuntur et postea dimisisse, cruces iterate assumere et viam ab instanti Pascha usque ad sequens proximum Pascha perficere, apostolica auctoritate praecipimus. Alioquin ex tunc eos ab ecclesiae introitu sequestramus et in omnibus terris eorum divina officia, praeter infantium baptisma et morientium poenitentias, interdicimus.

12. Illam vero pravam porticanorum consuetudinem, quae hactenus ibi fuit, ex fratrum nostrorum et totius curiae consilio, necnon et voluntate atque consensu praefecti, removendam censemus, ut porticanorum habitatorum sine haeredibus morientium bona contra morientium deliberationem minime pervadantur, ita tamen ut in posterum porticani in Romanae ecclesiae et nostrae nostrorumque successorum obedientia et fidelitate permaneant.

13. Si quis treugam diffregerit usque tertio ad satisfactionem ab episcopo admoneatur. Quod si tertio admonitus satisfacere contempserit, episcopus vel cum metropolitani consilio, aut cum duobus aut uno vicinorum episcoporum, in rebellem sententiam anathematis dictet, et per scripturam episcopis circumquaque denuntiet.

14. Sanctorum patrum canonibus consona sentientes, oblationes de sacratissimo et reverendissimo altari beati Petri et Salvatoris et Sanctae Mariae Rotundae, ac de aliis omnium ecclesiarum altaribus sive crucibus a laicis auferri penitus interdicimus et sub anathematis districtione prohibemus. Ecclesias a laicis incastellari aut in servitutem redigi, auctoritate apostolica prohibemus. (C.14, C.X, q.1.)

15. Quicumque monetam falsam scienter fecerit aut studiose expenderit, tanquam maledictus et pauperum virorum oppressor, necnon civitatis turbator, a fidelium consortio separetur.

16. Si quis Romipetas et peregrinos apostolorum limina et aliorum sanctorum oratoria visitantes capere seu rebus quas ferunt spoliare, et novis mercatores teloneorum et pedaticorum exactionibus molestare tentaverit, donec satisfecerit, communione careat christiana. (C.23, C.XXIV, q.3.)

17. Interdicimus abbatibus et monachis publicas poenitentias dare, infirmos visitare, unctiones facere et missas publicas cantare. Chrisma et oleum, consecrationes altarium,

ordinationes clericorum ab episcopis accipiant, in quorum parochiis manent. (C.10, C.XVI, q.1.)

18. In parochialibus ecclesiis presbyteri per episcopos constituantur, qui eis respondeant de animarum cura et de iis quae ad episcopum pertinent. Decimas et ecclesias a laicis non suscipiant absque consensu et voluntate episcoporum, et si aliter praesumptum fuerit, canonicae ultioni subjaceant.

19. Servitium quod monasteria aut eorum ecclesiae a tempore Gregorii papae VII usque ad hoc tempus episcopis fecere, et nos concedimus. Possessiones ecclesiarum et episcoporum tricennales abbates vel monachos habere omnimodis prohibemus.

20. Paternarum traditionum exemplis commoniti, pastoralis officii debitum persolventes, ecclesias cum bonis suis, tam personis quam possessionibus, clericos videlicet ac monachos eorumque conversos, aratores quoque cum suis nihilominus rebus quas ferunt, tutos et sine molestia esse statuimus. Si quis autem contra hoc facere praesumpserit et postquam facinus suum recognoverit, infra triginta dierum spatium competenter non emendaverit, a liminibus ecclesiae arceatur et anathematis gladio feriatur. (C.24, C.XXIV, q.3.)

21. Presbyteris, diaconibus, subdiaconibus et monachis concubinas habere seu matrimonia contrahere penitus interdicimus; contracta quoque matrimonia ab hujusmodi personis disjungi et personas ad poenitentiam debere redigi, juxta sacrorum canonum deffinitionem judicamus. (C.8, d.XXVII.)

22. Alienationes quae specialiter per Ottonem, Guidonem, Hieremiam seu forte Philippum, ubilibet de possessionibus Ravennatis exarchatus factae sunt, damnamus; generaliter autem omnium per intrusionem seu canonice electorum sub episcopi nomine aut abbatis qui secundum usum ecclesiae suae consecrandus est, alienationes quocumque modo factas, necnon personarum ordinationes ab eisdem sive communi consensu clericorum ecclesiae, sive per simonian itidem factas, irritas judicamus. Illud etiam per omnia interdicimus, ut nullus clericus praebendam suam seu aliquod ecclesiasticum beneficium aliquo modo alienare praesumat; quod si praesumptum olim fuit vel aliquando fuerit, irritum erit et canonicae ultioni subjacebit.

CANONES CONCILII LATERANENSIS II (OECUMEN. X)

Anno 1139 Habiti[1]

Can. 1. Statuimus, si quis simoniace ordinatus fuerit, ab officio omnino cadat quod illicite usurpavit.

2. Si quis praebendam, vel prioratum, seu decanatum, aut honorem, vel promotionem aliquam ecclesiasticam, seu quodlibet sacramentum ecclesiasticum, utpote chrisma, vel oleum sanctum, consecrationes altarium, vel ecclesiarum, interveniente execrabili ardore avaritiae per pecuniam acquisivit, honore male acquisito careat, et emptor atque venditor et interventor, nota infamiae percellantur. Et nec pro pastu, nec sub obtentu alicujus consuetudinis ante vel post a quoquam aliquid exigatur vel ipse dare praesumat, quoniam simoniacum est; sed libere et absque imminutione aliqua, collata sibi dignitate atque beneficio perfruatur. (C.15, C.I, q.3.)

3. A suis episcopis excommunicatos, ab aliis suscipi modis omnibus prohibemus. Qui vero excommunicato, antequam ab eo qui eum excommunicaverit absolvatur, scienter communicare praesumpserit, pari sententiae teneatur obnoxius.

4. Praecipimus etiam quod tam episcopi quam clerici, in statu mentis, in habitu corporis, Deo et hominibus placere studeant, et nec in superfluitate, scissura, aut colore vestium, nec in tonsura, intuentium, quorum forma et exemplum esse debent, offendant aspectum; sed potius quae eos deceat sanctitatem prae se ferant. Quod si, moniti ab episcopis, emendari noluerint, ecclesiasticis careant beneficiis.

5. Illud autem quod in sacro Chalcedonensi constitutum est concilio, irrefragabiliter conservari praecipimus. Ut videlicet decedentium bona episcoporum a nulla omnino hominum diripiantur, sed ad opus ecclesiae et successoris sui in libera oeconomi et clericorum permaneant potestate. Cesset igitur de cetero illa detestabilis et saeva rapacitas. Si quis autem amodo hoc attentare praesumpserit, excommunicationi subjaceat. Qui vero morientium presbyterorum et clericorum bona rapuerint, simili sententiae subjiciantur.

6. Decernimus etiam ut ii, qui in ordine subdiaconatus et supra, uxores duxerint, aut concubinas habuerint, officio atque ecclesiastico beneficio careant. Cum enim ipsi templum Dei, vasa Domini, sacrarium Spiritus Sancti debeant esse et dici, indignum est eos cubilibus et immunditiis deservire. (C.2, d.XXVIII.)

7. Ad haec praedecessorum nostrorum Gregorii VII, Urbani et Paschalis Romanorum pontificum vestigiis inhaerentes praecipimus, ut nullus missas eorum audiat quos uxores vel concubinas habere cognoverit. Ut autem lex continentiae et Deo placens munditia in ecclesiasticis personis et sacris ordinibus dilatetur, statuimus quatenus epis-

[1] Mansi, XXI, 526–33; Hefele-Leclercq, V, 725–33.

copi, presbyteri, diaconi, subdiaconi, regulares canonici et monachi atque conversi professi, qui sanctum transgredientes propositum, uxores sibi copulare praesumpserint, separentur. Hujusmodi namque copulationem, quam contra ecclesiasticam regulam constat esse contractam, matrimonium non esse censemus. Qui etiam ab invicem separati pro tantis excessibus condignam poenitentiam agant.

8. Idipsum quoque de sanctimonialibus feminis, si, quod absit, nubere attentaverint, observari decernimus.

9. Prava autem consuetudo, prout accepimus, et detestabilis inolevit, quoniam monachi et regulares canonici post susceptum habitum et professionem factam, spreta beatorum magistrorum Benedicti et Augustini regula, leges temporales et medicinam gratia lucri temporalis addiscunt. Avaritiae namque flammis accensi, se patronos causarum faciunt et, cum psalmodiae et hymnis vacare debeant, gloriosae vocis confisi munimine, allegationum suarum varietate, justum et injustum, fas nefasque confundunt. Attestantur vero imperiales constitutiones, absurdum, imo et opprobrium esse clericis, si peritos se velint disceptationum esse forensium. Hujusmodi temeratores graviter feriendos apostolica auctoritate decernimus. Ipsi quoque, neglecta animarum cura, ordinis sui propositum nullatenus attendentes, pro detestanda pecunia sanitatem pollicentes, humanorum curatores se faciunt corporum. Cumque impudicus oculus impudici cordis sit nuntius, illa, de quibus loqui erubescit honestas, non debet religio pertractare. Ut ergo ordo monasticus et canonicus Deo placens in sancto proposito inviolabiliter conservetur, ne hoc ulterius praesumatur apostolica auctoritate interdicimus. Episcopi autem, abbates et priores, tantae enormitati consentientes et non corrigentes, propriis honoribus spolientur, et ab ecclesiae liminibus arceantur.

10. Decimas ecclesiarum, quas in usu pietatis concessas esse canonica demonstrat auctoritas, a laicis possideri apostolica auctoritate prohibemus. Sive enim ab episcopis, vel regibus, vel quibuslibet personis eas acceperint, nisi ecclesiae reddiderint, sciant se sacrilegii crimen committere, et periculum aeternae damnationis incurrere. Praecipimus etiam ut laici, qui ecclesias tenent, aut eas episcopis restituant, aut excommunicationi subjaceant. Innovamus autem et praecipimus, ut nullus in archidiaconum vel decanum, nisi diaconus vel presbyter ordinetur; archidiaconi vero, decani, vel praepositi, qui infra ordines praenominatos existunt, si inobedientes ordinari contempserint, honore suscepto priventur. Prohibemus autem ne adolescentibus, vel infra sacros ordines constitutis, sed qui prudentia et merito vitae clarescunt, praedicti concedantur honores. Praecipimus etiam ne conductitiis presbyteris ecclesiae committantur; et unaquaeque ecclesia, cui facultas suppetit, proprium habeat sacerdotem.

11. Praecipimus etiam ut presbyteri, clerici, monachi, peregrini, et mercatores, et rustici euntes et redeuntes, et in agricultura persistentes, et animalia cum quibus aratur, et semina portant ad agrum, et oves, omni tempore securi sint.

12. Treugam autem ab occasu solis in quarta feria usque ad ortum solis in secunda feria, et ab adventu Domini usque ad octavas Epiphaniae, et a quinquagesima usque ad octavam Paschae, ab omnibus inviolabiliter observari praecipimus. Si quis autem treugam frangere tentaverit, post tertiam commonitionem, si non satisfecerit, episcopus suus in eum excommunicationis sententiam dictet, et scriptam episcopis vicinis annunciet. Episcoporum autem nullus excommunicatum in communionem suscipiat, imo scripto susceptam sententiam quisque confirmet. Si quis autem hoc violare praesumpserit, ordinis sui periculo subjacebit. Et quoniam funiculus triplex difficile rumpitur, praecipi-

mus ut episcopi ad solum Deum et salutem populi habentes respectum, omni tepiditate seposita, ad pacem firmiter tenendam mutuum sibi consilium et auxilium praebeant, neque hoc alicujus amore aut odio praetermittant. Quod si quis in hoc Dei opere tepidus inventus fuerit, damnum propriae dignitatis incurrat.

13. Porro detestabilem et probrosam divinis et humanis legibus per Scripturam in Veteri et in Novo Testamento abdicatam; illam, inquam, insatiabilem foeneratorum rapacitatem damnamus, et ab omni ecclesiastica consolatione sequestramus; praecipientes, ut nullus archiepiscopus, nullus episcopus, vel cujuslibet ordinis abbas, seu quivis in ordine et clero, nisi cum summa cautela, usurarios recipere praesumat, sed in tota vita infames habeantur; et, nisi respuerint, christiana sepultura priventur.

14. Detestabiles autem illas nundinas, vel ferias, in quibus milites ex condicto convenire solent, et ad ostentationem virium suarum et audaciae temerarie congrediuntur, unde mortes hominum et animarum pericula saepe proveniunt, omnino fieri interdicimus. Quod si quis eorum ibidem mortuus fuerit, quamvis ei poscenti poenitentia et viaticum non negetur, ecclesiastica tamen careat sepultura.

15. Item placuit, ut si quis suadente diabolo hujus sacrilegii reatum incurrit, quod in clericum vel monachum violentas manus injecerit, anathematis vinculo subjaceat, et nullus episcoporum illum praesumat absolvere, nisi mortis urgente periculo, donec apostolico conspectui praesentetur et ejus mandatum suscipiat. Praecipimus etiam, ut in eos, qui ad ecclesiam vel coemeterium confugerint, nullus omnino manum mittere audeat. Quod si fecerit, excommunicetur. (C.29, C.XVII, q.4.)

16. Indubitatum est, quoniam honores ecclesiastici sanguinis non sunt sed meriti, et ecclesia Dei non haereditario jure aliquem, neque secundum carnem, successorem expectat, sed ad sua regimina et officiorum suorum dispensationes, honestas, sapientes, et religiosas personas exposcit. Propterea auctoritate prohibemus apostolica, ne quis ecclesias, praebendas, praepositiuras, capellanias, aut aliqua ecclesiastica officia haereditario jure valeat vindicare, aut expostulare praesumat. Quod si quis improbus aut ambitionis reus attentare praesumpserit, debita poena mulctabitur et postulatis carebit.

17. Sane conjunctiones consanguineorum omnino fieri prohibemus. Hujusmodi namque incestum, qui fere, stimulante humani generis inimico, in usum versus est, sanctorum patrum instituta et sacrosancta Dei detestatur ecclesia. Leges etiam saeculi de tali contubernio natos infames pronuntiant et ab haereditate repellunt.

18. Pessimam siquidem, et depopulatricem et horrendam incendiariorum malitiam auctoritate Dei et beatorum apostolorum Petri et Pauli omnino detestamur et interdicimus; haec enim pestis, haec hostilis vastitas omnes alias depraedationes exuperat. Quae quantum populo Dei sit damnosa, quantumque detrimentum animabus et corporibus inferat, nullus ignorat. Assurgendum est igitur, et omnimodo laborandum, ut tanta clades, tantaque pernicies, pro salute populi eradicetur et extirpetur. Si quis igitur post hujus nostrae prohibitionis promulgationem malo studio, sive pro odio, sive pro vindicta, ignem apposuerit, vel apponi fecerit, aut appositoribus consilium vel auxilium scienter tribuerit, excommunicetur. Et si mortuus fuerit incendiarius, christianorum careat sepultura. Nec absolvatur, nisi prius damno cui intulit secundum facultatem suam resarcito, juret se ulterius ignem non appositurum. Poenitentia autem ei detur, ut Hierosolymis aut in Hispania in servitio Dei per annum integrum permaneat.

19. Si quis autem archiepiscopus, vel episcopus hoc relaxaverit, damnum restituat, et per annum ab officio episcopali abstineat.

20. Sane regibus et principibus facultatem faciendae justitiae consultis archiepiscopis et episcopis non negamus.

21. Presbyterorum filios a sacris altaris ministeriis removendos decernimus, nisi aut in coenobiis aut in canonicis religiose fuerint conversati.

22. Sane quia inter cetera unum est, quod sanctam maxime perturbat ecclesiam, falsa videlicet poenitentia, confratres nostros et presbyteros admonemus, ne falsis poenitentiis laicorum animas decipi, et in infernum pertrahi patiantur. Falsam autem poenitentiam esse constat, cum spretis pluribus, de uno solo poenitentia agitur; aut cum sic agitur de uno, ut non discedatur ab alio. Unde scriptum est: *Qui totam legem observaverit, offendit autem in uno, factus est omnium reus;* [2] scilicet quantum ad vitam aeternam. Sicut enim, si peccatis esset omnibus involutus, ita si in uno tantum maneat, aeternae vitae januam non intrabit. Falsa etiam fit poenitentia, cum poenitens ab officio vel curiali vel negotiali non recedit, quod sine peccato agi nulla ratione praevalet; aut si odium in corde gestetur, aut si offenso cuilibet non satisfiat, aut si offendenti offensus non indulgeat, aut si arma quis contra justitiam gerat.

23. Eos autem, qui religiositatis speciem simulantes, Domini corporis et sanguinis sacramentum, baptisma puerorum, sacerdotium, et ceteros ecclesiasticos ordines, et legitimarum damnant foedera nuptiarum, tanquam haereticos ab ecclesia Dei pellimus et damnamus et per potestates exteras coerceri praecipimus. Defensores quoque ipsorum ejusdem damnationis vinculo innodamus.

24. Illud quoque adjicientes praecipimus, ut pro chrismatis, olei sacri et sepulturae acceptione, nullum venditionis pretium exigatur.

25. Si quis praeposituras, praebendas, vel alia ecclesiastica beneficia de manu laici acceperit, indigne suscepto careat beneficio. Juxta namque decreta sanctorum patrum, laici quamvis religiosi sint, nullam tamen habent disponendi de ecclesiasticis facultatibus potestatem.

26. Ad haec perniciosam et detestabilem consuetudinem quarumdam mulierum, quae licet neque secundum regulam B. Benedicti, neque Basilii, aut Augustini vivant, sanctimoniales tamen vulgo censeri desiderant, aboleri decernimus. Cum enim juxta regulam degentes in coenobiis tam in ecclesia quam in refectorio atque dormitorio communiter esse debeant, propria sibi aedificant receptacula et privata domicilia, in quibus sub hospitalitatis velamine passim hospites et minus religiosos, contra sacros canones et bonos mores suscipere nullatenus erubescunt. Quia ergo omnis qui male agit odit lucem, ac per hoc ipsae absconditae injustorum tabernaculo opinantur se posse latere oculos Judicis cuncta cernentis, hoc tam inhonestum detestandumque flagitium ne ulterius fiat, omnimodis prohibemus, et sub poena anathematis interdicimus. (C.25, C.XVIII, q.2.)

27. Simili modo prohibemus, ne sanctimoniales simul cum canonicis vel monachis in ecclesia in uno choro conveniant ad psallendum.

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[2] Jac. 2:10.

28. Obeuntibus sane episcopis, quoniam ultra tres menses vacare ecclesias prohibent patrum sanctiones, sub anathemate interdicimus, ne canonici de sede episcopali ab electione episcoporum excludant religiosos viros, sed eorum consilio honesta et idonea persona in episcopum eligatur. Quod si exclusis eisdem religiosis electio fuerit celebrata, quod absque eorum assensu et convenientia factum fuerit, irritum habeatur et vacuum. (C.35, d.LXIII.)

29. Artem autem illam mortiferam et Deo odibilem ballistariorum et sagittariorum adversus christianos et catholicos exerceri de cetero sub anathemate prohibemus. (C.1, X, De sagitt., V, 15.)

30. Ad haec, ordinationes factas a Petro Leonis et aliis schismaticis et haereticis evacuamus, et irritas esse censemus.

CANONES CONCILII LATERANENSIS III (OECUMEN. XI)

ANNO 1179 HABITI[1]

Can. 1. Licet de evitanda discordia in electione summi pontificis manifesta satis a nostris praedecessoribus constituta manaverint, tamen quia saepe post illa per improbae ambitionis audaciam, gravem passa est ecclesia scissuram: nos etiam ad malum hoc evitandum, de consilio fratrum nostrorum et sacri approbatione concilii, aliquid decrevimus adjungendum. Statuimus igitur, ut si forte inimico homine superseminante zizania inter cardinales de substituendo pontifice non potuerit concordia plena esse, et duabus partibus concordantibus, tertia pars noluerit concordare, aut sibi alium praesumpserit ordinare, ille Romanus pontifex habeatur, qui a duabus partibus fuerit electus, et receptus. Si quis autem de tertiae partis nominatione confisus, quia rem non potest, sibi nomen episcopi usurpaverit; tam ipse, quam qui eum receperint, excommunicationi subjaceant, et totius sacri ordinis privatione mulctentur, ita ut viatici eis etiam, nisi tantum in ultimis, communio denegetur; et nisi resipuerint, cum Dathan et Abiron, quos terra vivos absorbuit, accipiant portionem. Praeterea si a paucioribus aliquis, quam a duabus partibus fuerit electus ad apostolatus officium, nisi major concordia intercesserit, nullatenus assumatur, et praedictae poenae subjaceat si humiliter noluerit abstinere. Ex hoc tamen nullum canonicis constitutionibus et aliis ecclesiasticis praejudicium generetur, in quibus et sanioris partis debet sententia praevalere; quia quod in eis dubium venerit, superioris poterit judicio diffiniri. In Romana vero ecclesia aliquid speciale constituitur, quia non potest recursus ad superiorem haberi. (C. 6, X, De elect., I, 6.)

2. Quod a praedecessore nostro felicis memoriae Innocentio factum est, innovantes, ordinationes ab Octaviano et Guidone haeresiarchis, necnon et Joanne Strumensi, qui eos secutus est, factas, et ab ordinatis ab eis, irritas esse censemus; adjicientes etiam, ut si qui dignitates ecclesiasticas, seu beneficia, per praedictos schismaticos receperunt, careant impetratis. Alienationes quoque, seu invasiones, quae per eosdem schismaticos, sive per laicos factae sint de rebus ecclesiasticis, omni careant firmitate et ad ecclesiam sine ejus onere revertantur. Si quis autem contraire praesumpserit, excommunicationi se noverit subjacere. Illos autem qui sponte juramentum de tenendo schismate praestiterunt, a sacris ordinibus et dignitatibus decrevimus manere suspensos. (C. 1, X, De schismat., V, 8.)

3. Cum in sacris ordinibus et ministeriis ecclesiasticis et aetatis maturitas, et morum gravitas, et scientia litterarum sit inquirenda; multo fortius haec in episcopo oportet inquiri, qui ad curam positus aliorum, in seipso debet ostendere, qualiter alios in domo Domini oporteat conversari. Eapropter, ne quod a quibusdam ex necessitate temporis factum est, in exemplum trahatur a posteris; praesenti decreto statuimus, ut nullus in episcopum eligatur, nisi qui jam trigesimum aetatis annum egerit; et de legitimo sit matrimonio natus, qui etiam vita et scientia commendabilis demonstretur. Cum autem electus fuerit, et confirmationem electionis acceperit, et ecclesiasticorum bonorum ad-

[1] Mansi, XXII, 217–33; Hefele-Leclercq, V, 1087–1107.

ministrationem habuerit, decurso tempore, de consecrandis episcopis a canonibus definito, is, ad quem spectat, beneficia, quae habuerat, disponendi de illis liberam habeat facultatem. Inferiora etiam ministeria utpote decanatus, archidiaconatus et alia, quae animarum curam habent annexam, nullus omnino suscipiat, sed nec parochialium ecclesiarum regimen, nisi qui jam vigesimum quintum aetatis annum attigerit, et qui scientia et moribus existat commendandus. Cum autem assumptus fuerit, si archidiaconus in diaconum, et decani et reliqui admoniti non fuerint praefixo a canonibus tempore in presbyteros ordinati, et ab illo removeantur officio, et alii conferatur, qui et velit et possit convenienter illud implere. Nec prosit illis appellationis diffugium, si forte in transgressionem constitutionis istius per appellationem voluerint se tueri. Hoc sane non solum de promovendis, sed de his etiam qui jam promoti sunt, si canones non obsistant, praecipimus observandum. Clerici sane si contra formam istam quemquam elegerint, et eligendi potestate tunc privatos, et ab ecclesiasticis beneficiis triennio se noverint suspensos. Dignum est enim, ut quos timor Dei a malo non revocat, ecclesiasticae saltem coerceat severitas disciplinae. Episcopus autem si cui fecerit, aut fieri consenserit contra hoc; in conferendis praedictis potestatem suam amittat, et per capitulum, aut per metropolitanum, si capitulum concordare nequiverit, ordinetur. (C.7, X, De elect., I, 6.)

4. Cum apostolus se et suos propriis manibus decreverit exhibendos, ut locum praedicandi auferret pseudoapostolis, et illis quibus praedicabat, non existeret onerosus; grave nimis et emendatione fore dignum dignoscitur, quod quidam fratrum et coepiscoporum nostrorum, ita graves in procurationibus suis subditis existunt, ut pro hujusmodi causa interdum ornamenta ecclesiastica subditi compellantur exponere, et longi temporis victum brevis hora consumat. Quocirca statuimus, quod archiepiscopi parochias visitantes, pro diversitate provinciarum, et facultatibus ecclesiarum, quadraginta vel quinquaginta evectionis numerum non excedant; cardinales vero viginti-quinque non excedant; episcopi viginti vel triginta nequaquam excedant. Archidiaconi quinque aut septem; decani constituti sub ipsis, duobus equis existant contenti. Nec cum canibus venatoriis et avibus proficiscantur, sed ita procedant, ut non quae sunt sua, sed quae Jesu Christi quaerere videantur; nec sumptuosas epulas quaerant, sed cum gratiarum actione recipiant, quod honeste et competenter fuerit illis ministratum. Prohibemus etiam, ne subditos suos talliis et exactionibus episcopi gravare praesumant. Sustinemus autem pro multis necessitatibus, quae aliquoties superveniunt, ut, si manifesta et rationabilis causa extiterit, cum caritate moderatum ab eis valeant auxilium postulare. Cum enim dicat apostolus: *Non debent parentibus filii thesaurizare, sed parentes filiis;*[2] multum longe a paterna pietate videtur, si praepositi suis subditis graves existant, quos in cunctis necessitatibus pastoris more fovere debent. Archidiaconi vero sive decani nullas exactiones vel tallias in presbyteros seu clericos exercere praesumant. Sane quod de praedicto numero evectionis secundum tolerantiam dictum est, in illis locis poterit observari in quibus ampliores sunt reditus et ecclesiae facultates. In pauperioribus autem locis tantam volumus teneri mensuram, ut ex excessu majorum, minores non debeant gravari; ne sub tali indulgentia, illi qui paucioribus equis uti solebant hactenus, plurimam sibi credant potestatem indultam. (C.6, X, De cens., III, 39.)

5. Episcopus, si aliquem sine certo titulo, de quo necessaria vitae percipiat, in diaconum vel presbyterum ordinaverit, tamdiu necessaria ei subministret, donec in aliqua ei ecclesia convenientia stipendia militiae clericalis assignet; nisi forte talis qui ordi-

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[2] Vide II Cor. 12:14.

natur, extiterit, qui de sua vel paterna haereditate subsidium vitae possit habere. (C.4, X, De praebend., III, 5.)

6. Reprehensibilis valde consuetudo in quibusdam partibus inolevit, ut fratres et coepiscopi nostri, seu etiam archidiaconi, quos appellaturos in causis suis existimant, nulla penitus admonitione praemissa, suspensionis vel excommunicationis in eos ferant sententiam. Alii etiam dum superioris sententiam et disciplinam canonicam reformidant, sine ullo gravamine appellationem objiciunt, et ad defensionem iniquitatis usurpant, quod ad subsidium innocentium dignoscitur institutum. Quocirca, ne vel praelati valeant sine causa gravare subjectos, vel subditi pro sua voluntate sub appellationis obtentu correctionem valeant eludere praelatorum, praesenti decreto statuimus, ut nec praelati, nisi canonica commonitione praemissa, suspensionis vel excommunicationis sententiam proferant in subjectos, nisi forte talis sit culpa, quae ipso genere suo excommunicationis poenam inducat; nec subjecti contra disciplinam ecclesiasticam ante ingressum causae in vocem appellationis prorumpant. Si vero quisquam pro sua necessitate crediderit appellandum, competens ei ad prosequendam appellationem terminus praefigatur; intra quem si forte prosequi neglexerit, libere tunc episcopus sua auctoritate utatur. Si autem in quocumque negotio aliquis appellaverit, et eo, qui appellatus fuerit, veniente, qui appellaverit, venire neglexerit, si proprium quid habuit, competentem ei recompensationem faciat expensarum; ut hoc saltem timore perterritus, in gravamen alterius non facile quis appellet. Praecipue vero in locis religiosis hoc volumus observari, ne monachi, sive quicumque religiosi, cum pro aliquo excessu fuerint corrigendi, contra regularem praelati sui et capituli disciplinam appellare praesumant, sed humiliter ac devote suscipiant, quod pro salute sua utiliter eis fuerit injunctum. (C.26, X, De appell., II, 28.)

7. Cum in ecclesiae corpore omnia debeant ex caritate tractari, et quod gratis receptum est, gratis impendi; horribile nimis est, quod in quibusdam ecclesiis locum venalitas perhibetur habere, ita ut pro episcopis vel abbatibus, seu quibuscumque personis ecclesiasticis ponendis in sede, seu introducendis presbyteris in ecclesiam, necnon pro sepulturis et exequiis mortuorum, et benedictionibus nubentium, seu aliis sacramentis, aliquid exigatur, et ille qui indiget non possit ista percipere, nisi manum implere curaverit largitoris. Putant plures ex hoc sibi licere, quia legem mortis de longa invaluisse consuetudine arbitrantur; non satis, quia cupiditate caecati sunt, attendentes, quod tanto graviora sunt crimina, quanto diutius animam infelicem tenuerint alligatam. Ne igitur hoc de cetero fiat, et vel pro personis ecclesiasticis deducendis ad sedem, vel sacerdotibus instituendis, aut mortuis sepeliendis, seu etiam nubentibus benedicendis, seu etiam aliis sacramentis, aliquid exigatur, districtius inhibemus. Si quis autem contra hoc venire praesumpserit, portionem cum Giezi se noverit habiturum; cujus factum turpis muneris exactione imitatur. Prohibemus insuper, ne novi census ab episcopis vel abbatibus, aliisve praelatis imponantur ecclesiis, nec veteris augeantur, nec partem redituum suis usibus appropriare praesumant; sed libertates, quas sibi majores desiderant conservari, minoribus quoque suis bona voluntate conservent. Si quis autem aliter egerit, irritum quod fecerit, habeatur. (C.9, X, De simonia, V, 3 et c.7, X, De cens., III, 39.)

8. Nulla ecclesiastica ministeria, seu etiam beneficia, vel ecclesiae, alicui tribuantur seu promittantur antequam vacent; ne desiderare quis mortem proximi videatur, in cujus locum et beneficium se crediderit successurum. Cum enim id etiam in ipsis gentilium legibus inveniatur prohibitum, turpe nimis est divini plenum animadversione judicii, si locum in Dei ecclesia futurae successionis expectatio habeat, quam etiam

damnare ipsi gentiles homines curaverunt. Cum vero praebendas ecclesiasticas, seu quaelibet officia, in aliqua ecclesia vacare contigerit, vel etiam si modo vacant, non diu maneant in suspenso, sed infra sex menses personis, quae digne administrare valeant, conferantur. Si autem episcopus, ubi ad eum spectaverit, conferre distulerit, per capitulum ordinetur. Quod si ad capitulum electio pertinuerit, et infra praedictum terminum hoc non fecerit, episcopus hoc secundum Deum cum virorum religiosorum consilio exequatur. Aut si omnes forte neglexerint, metropolitanus de ipsis secundum Deum absque illorum contradictione disponat. (C. 2, X, De concess. praebend., III, 8.)

9. Cum et plantare sacram religionem, et plantatam fovere modis omnibus debeamus; nunquam hoc melius exequemur, quam si nutrire quae recta sunt, et corrigere quae profectum veritatis impediunt, commissa nobis auctoritate curemus. Fratrum autem et coepiscoporum nostrorum vehementi conquestione comperimus, quod fratres Templi et Hospitalis, alii quoque religiosae professionis, indulta sibi ab apostolica sede excedentes privilegia, contra episcopalem auctoritatem multa praesumant, quae et scandalum generant in populo Dei, et grave pariunt periculum animarum. Proponunt enim, quod ecclesias recipiant de manibus laicorum, excommunicatos et interdictos ad ecclesiastica sacramenta et sepulturam admittant, in ecclesiis suis praeter eorum conscientiam et instituant et amoveant sacerdotes, et fratribus eorum ad eleemosynas quaerendas euntibus, cum indultum sit eis, ut in adventu eorum semel in anno ecclesiae aperiantur, atque in eis divina celebrentur officia, plures ex eis de una sive diversis domibus ad locum interdictum saepius accedentes, indulgentia privilegiorum in celebrandis officiis abutuntur, et tunc mortuos apud praedictas ecclesias sepelire praesumunt. Occasione quoque fraternitatum, quas in pluribus locis faciunt, robur episcopalis auctoritatis enervant, dum contra eorum sententiam sub aliquorum privilegiorum obtentu munire cunctos intendunt, qui ad eorum fraternitatem volunt accedere, et se conferre. In his, quia non tam de majorum conscientia, vel consilio, quam de minorum indiscretione quorumdam exceditur; et removenda ea in quibus excedunt, et quae dubietatem faciunt, declaranda decrevimus. Ecclesias sane et decimas de manu laicorum sine consensu episcoporum, tam illos quam quoscumque alios religiosos recipere prohibemus, dimissis etiam quas contra tenorem istum moderno tempore receperunt: excommunicatos et nominatim interdictos, tam ab illis, quam ab omnibus aliis, juxta episcoporum sententiam, statuimus evitandos. In ecclesiis suis, quae ad eos pleno jure non pertinent, instituendos presbyteros episcopis praesentent, ut eis quidem de plebis cura respondeant, ipsis vero pro rebus temporalibus rationem exhibeant competentem; institutos autem, episcopis inconsultis, non audeant removere. Si vero Templarii sive Hospitalarii ad ecclesiasticum interdictum venerint, non nisi semel in anno ad ecclesiasticum admittantur officium, nec tunc ibi corpora sepeliant defunctorum. De fraternitatibus hoc statuimus, ut si non se praedictis fratribus omnino reddiderint, sed in suis proprietatibus duxerint remanendum, propter hoc ab episcoporum sententia nullatenus eximantur; sed potestatem suam in eos sicut in alios parochianos suos exerceant, cum pro suis excessibus fuerint corrigendi. Quod autem de praedictis fratribus dictum est, de aliis quoque religiosis, qui praesumptione sua episcoporum jura praeripiunt, et contra canonicas eorum sententias et tenorem privilegiorum nostrorum venire praesumunt, praecipimus observari. Si autem contra hoc institutum venerint, et ecclesiae in quibus ista praesumpserint, subjaceant interdicto, et quod egerint irritum habeatur. (C. 3, X, De privileg., V, 33.)

10. Monachi non pretio recipiantur in monasterio, non peculium permittantur habere, non singuli per villas et oppida, seu ad quascumque parochiales ponantur ec-

clesias; sed in majori conventu, aut cum aliquibus fratribus maneant; nec soli inter saeculares homines spiritualium hostium conflictionem expectent, Salomone dicente, *Vae soli, quia si ceciderit non habet sublevantem.*[3] Si quis autem exactus, pro sua receptione aliquid dederit, ad sacros ordines non ascendat. Is autem qui acceperit, officii sui privatione mulctetur. Si vero peculium habuerit, nisi ei ab abbate pro injuncta fuerit administratione permissum, a communione removeatur altaris; et qui in extremis cum peculio inventus fuerit, nec oblatio pro eo fiat nec inter fratres recipiat sepulturam. Quod etiam de diversis religiosis praecipimus observari. Abbas etiam qui ista diligenter non curaverit, officii sui jacturam se noverit incursurum. Prioratus quoque sive obedientiae, pretii datione nulli tradantur. Alioqui et dantes et accipientes a ministerio fiant ecclesiastico alieni. Priores vero cum in conventualibus ecclesiis fuerint constituti, nisi pro manifesta causa et rationabili non mutentur, videlicet si fuerint dilapidatores, nec continenter vixerint, aut aliquid tale egerint, pro quo amovendi merita videantur; aut si etiam pro necessitate majoris officii, de consilio fratrum fuerint transferendi. (C.2, X, De statu monach., III, 35.)

11. Clerici in sacris ordinibus constituti, qui mulierculas suas in domibus suis incontinentiae nota tenuerint, aut abjiciant eas et continenter vivant, aut ab officio et beneficio ecclesiastico fiant alieni. Quicumque incontinentia illa, quae contra naturam est, propter quam venit ira Dei in filios diffidentiae, et quinque civitates igne consumpsit deprehensi fuerint laborare; si clerici fuerint, ejiciantur a clero, vel ad poenitentiam agendam in monasteriis detrudantur; si laici, excommunicationi subdantur, et a coetu fidelium fiant prorsus alieni. Monasteria praeterea sanctimonialium si quisquam clericus sine manifesta et necessaria causa frequentare praesumpserit, per episcopum arceatur; et si non destiterit, a beneficio ecclesiastico reddatur immunis. (C.4, X, De excess. prael., V, 31 et c.8, X, De vita et honest. cler., III, 1.)

12. Clerici in subdiaconatu et supra, et in minoribus quoque ordinibus, si stipendiis ecclesiasticis sustententur, coram judice saeculari advocati in negotiis fieri non praesumant, nisi propriam, vel ecclesiae suae causam fuerint prosecuti, aut pro miserabilibus forte personis, quae proprias causas administrare non possunt. Sed nec procurationes villarum, aut jurisdictiones etiam saeculares sub aliquibus principibus, vel saecularibus viris, ut justitiarii eorum fiant, clericorum quisquam assumere praesumat. Si quis adversus hoc tentaverit, quoniam contra doctrinam apostoli est dicentis, *Nemo militans Deo, implicat se negotiis saecularibus,*[4] et saeculariter agit; ab ecclesiastico fiat ministerio alienus, pro eo quod officio clericali neglecto, fluctibus saeculi, ut potentibus saeculi placeat, se immergit. Districtius autem decrevimus puniendum, si religiosorum quisquam aliquid praedictorum audeat attentare. (C.1, X, De postul., I, 37 et c.4, X, Ne cler. vel monach., III, 50.)

13. Quia nonnulli modum avaritiae non ponentes, dignitates diversas ecclesiasticas, et plures ecclesias parochiales contra sacrorum canonum instituta nituntur acquirere, ita ut cum unum officium vix implere sufficiant, stipendia sibi vindicent plurimorum; ne id de cetero fiat, districtius inhibemus. Cum igitur ecclesia, vel ecclesiasticum ministerium committi debuerit, talis ad hoc persona quaeratur, quae residere in loco, et curam ejus per se ipsum valeat exercere. Quod si aliter fuerit actum, et qui receperit quod contra sanctos canones accepit, amittat; et qui dederit, largiendi potestate privetur. (C.3, X, De cler. non resident., III, 4.)

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[3] Eccles. 4:10.
[4] Vide II Tim. 2:4.

14. Quia in tantum jam quorumdam processit ambitio, ut non duas, vel tres, sed sex aut plures ecclesias perhibeantur habere, nec duabus debitam possint provisionem impendere, per fratres et coepiscopos nostros emendari praecipimus, et de multitudine praebendarum canonibus inimica, quae dissolutionis materiam et vagationis inducit, et certum continet periculum animarum, eorum qui ecclesiis digne valeant deservire, volumus ecclesiasticis beneficiis indigentiam sublevari. Praeterea, quia in tantum quorumdam laicorum processit audacia, ut auctoritate episcoporum neglecta, clericos instituant in ecclesiis, et removeant etiam cum voluerint; possessiones quoque atque alia bona ecclesiastica pro sua plerumque voluntate distribuant, et tam ecclesias ipsas quam earum homines, talliis et exactionibus praesumant gravare; eos qui amodo ista commiserint, anathemate decernimus feriendos. Presbyter autem sive clericus, qui ecclesiam per laicos sine proprii episcopi auctoritate receperit tenendam, communione privetur; et si persistiterit, a ministerio ecclesiastico et ordine deponatur. Sane quia laici quidam ecclesiasticas personas, et ipsos etiam episcopos, suo judicio stare compellunt; eos qui de cetero id praesumpserint, a communione fidelium decernimus segregandos. Prohibemus etiam, ne laici decimas cum animarum suarum periculo detinentes in alios laicos possint aliquo modo transferre. Si qui vero receperit, et ecclesiae non tradiderit, christiana sepultura privetur. (C. 5, X, De praebend., III, 5; c. 4, X, De jure patronat., III, 38; c. 19, X, De decimis, III, 30.)

15. Cum in officiis caritatis, illis primo teneamur obnoxii, a quibus nos beneficium cognoscimus accepisse; e contrario ecclesiastici quidam clerici, cum ab ecclesiis suis multa bona perceperint, bona per ecclesias acquisita, in alios usus praesumunt transferre. Hoc igitur quia et antiquis canonibus constat inhibitum, nos etiam nihilominus inhibemus. Indemnitati itaque ecclesiarum providere volentes, sive intestati decesserint, sive aliis conferre voluerint, penes ecclesias eadem bona praecipimus remanere. Praeterea quoniam quidam in quibusdam partibus sub pretio statuuntur qui decani vocantur, et pro certa pecuniae quantitate episcopalem jurisdictionem exercent, praesenti decreto statuimus, ut qui de cetero id praesumpserit, officio suo privetur, et episcopus conferendi hoc officium potestatem amittat. (C. 7, X, De testament., III, 26 et c. 1, X, Ne prael. vic. suas, V, 4.)

16. Cum in cunctis ecclesiis, quod pluribus et sanioribus fratribus visum fuerit, incunctanter debeat observari; grave nimis, et reprehensione est dignum, quod quarumdam ecclesiarum pauci quandoque non tam de ratione, quam de propria voluntate ordinationem multoties impediunt, et ordinationem ecclesiasticam procedere non permittunt. Quocirca praesenti decreto statuimus, ut nisi a paucioribus et inferioribus aliquid rationabile fuerit ostensum, appellatione remota, semper praevaleat, et suum consequatur effectum, quod a majori et saniori parte capituli fuerit constitutum. Nec nostram constitutionem impediat, si forte aliquis ad conservandam ecclesiae suae consuetudinem, juramento se dicat adstrictum. Non enim dicenda sunt juramenta, sed potius perjuria, quae contra utilitatem ecclesiasticam et sanctorum patrum veniunt instituta. Si quis autem hujusmodi consuetudines, quae nec ratione juvantur nec sacris congruunt institutis, jurare praesumpserit, donec dignam egerit poenitentiam, a perceptione sit dominici corporis alienus. (C. 1, X, De his, quae fiunt a major. part. capit., III, 11.)

17. Quoniam in quibusdam locis ecclesiarum fundatores, aut haeredes eorum, potestate in qua eos ecclesia hucusque sustinuit, abutuntur; et cum in ecclesia Dei unus debeat esse qui praesit, ipsi plures sine respectu subjectionis eligere moliuntur; et cum una ecclesia unius debeat esse rectoris, pro sua defensione plurimos repraesentant.

Quocirca praesenti decreto statuimus, ut si forte in plures partes fundatorum se vota diffuderint, ille praeficiatur ecclesiae qui majoribus juvatur meritis, et plurimorum eligitur et probatur assensu. Si autem hoc sine scandalo fieri nequiverit, ordinet antistes ecclesiam, sicut melius secundum Deum viderit ordinandam. Idipsum etiam faciat, si de jure patronatus quaestio emerserit inter aliquos, et cui competat, infra tres menses non fuerit definitum. (C.3, X, De jur. patronat., III, 38.)

18. Quoniam ecclesia Dei, et in iis quae spectant ad subsidium corporis, et in iis quae ad profectum veniunt animarum, indigentibus sicut pia mater providere tenetur; ne pauperibus, qui parentum opibus juvari non possunt, legendi et proficiendi opportunitas subtrahatur, per unamquamque ecclesiam cathedralem magistro, qui clericos ejusdem ecclesiae, et scholares pauperes gratis doceat, competens aliquod beneficium assignetur, quo docentis necessitas sublevetur, et discentibus via pateat ad doctrinam. In aliis quoque restituatur ecclesiis sive monasteriis, si retroactis temporibus aliquid in eis ad hoc fuerit deputatum. Pro licentia vero docendi nullus pretium exigat, vel sub obtentu alicujus consuetudinis, ab iis qui docent, aliquid quaerat; nec docere quempiam, petita licentia, qui sit idoneus, interdicat. Qui vero contra hoc venire praesumpserit, a beneficio ecclesiastico fiat alienus. Dignum quidem esse videtur, ut in ecclesia Dei fructum laboris sui non habeat, qui cupiditate animi dum vendit licentiam docendi, ecclesiarum profectum nititur impedire. (C.1, X, De magistris, V, 5.)

19. Non minus pro peccato eorum qui faciunt, quam pro illorum detrimento qui sustinent, grave nimis esse dignoscitur, quod in diversis partibus mundi rectores et consules civitatum, necnon et alii qui potestatem habere videntur, tot ecclesiis frequenter onera imponunt, et ita gravibus eas, crebrisque exactionibus premunt, ut deterioris conditionis factum sub eis sacerdotium videatur, quam sub Pharaone fuerit, qui divinae legis notitiam non habebat. Ille quidem omnibus aliis servituti subjectis, sacerdotes suos, et eorum possessiones in pristina libertate dimisit, et de publico eis alimoniam ministravit. Isti vero universa fere onera sua imponunt ecclesiis, et tot angariis eas affligunt, ut illud eis quod Jeremias deplorat competere videatur: *Princeps provinciarum facta est sub tributo.*[5] Sive quidem fossata, sive expeditiones, sive quaelibet sibi arbitrentur agenda, de bonis ecclesiarum, clericorum et pauperum Christi usibus deputatis cuncta volunt fere compilari. Jurisdictionem etiam et auctoritatem episcoporum, et aliorum praelatorum ita evacuant, ut nihil potestatis eis in suis videatur hominibus remansisse. Super quo dolendum est pro ecclesiis; dolendum etiam nihilominus et pro ipsis, qui timorem Dei et ecclesiastici ordinis reverentiam videntur penitus abjecisse. Quocirca sub anathematis districtione severius prohibemus, ne de cetero talia praesumant attentare, nisi episcopus et clerus tantam necessitatem vel utilitatem aspexerint, ut absque ulla coactione ad relevandas communes necessitates, ubi laicorum non suppetunt facultates, subsidia per ecclesias existiment conferenda. Si autem consules, aut alii, de cetero id praesumpserint, et commoniti desistere forte noluerint; tam ipsi, quam eorum fautores, excommunicationi se noverint subjacere; nec communioni fidelium reddantur, nisi satisfactionem fecerint competentem. (C.4, X, De immunit. eccl., III, 49.)

20. Felicis memoriae papae Innocentii et Eugenii praedecessorum nostrorum vestigiis inhaerentes, detestabiles illas nundinas vel ferias, quas vulgo torneamenta vocant, in quibus milites ex condicto venire solent, et ad ostentationem virium suarum et audaciae temere congrediuntur, unde et mortes hominum et animarum pericula saepe

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[5] Thren. 1:1.

proveniunt, fieri prohibemus. Quod si quis eorum ibidem mortuus fuerit, quamvis ei poscenti venia non negetur, ecclesiastica tamen cereat sepultura. (C. 1, X, De torneam., V, 13.)

21. Treugas a quarta feria post occasum solis usque ad secundam feriam in ortum solis, et ab adventu Domini usque ad octavas Epiphaniae, et a Septuagesima usque ad octavas Paschae, ab omnibus inviolabiliter observari praecipimus. Si quis autem treugas frangere tentaverit, post tertiam commonitionem, si non satisfecerit, episcopus suus sententiam excommunicationis dictet in eum, et scriptam vicinis episcopis annuntiet, quorum nullus excommunicatum in communionem suscipiat, imo scriptam susceptam sententiam quisque confirmet. Si quis autem hoc violare praesumpserit, ordinis sui periculo subjaceat. Et quoniam *funiculus triplex non facile rumpitur,*[6] praecipimus, ut episcopi solum Dei et salutis populi habentes respectum, omni tepiditate seposita, ad pacem firmiter tenendam mutuum sibi consilium et auxilium praestent; neque hoc alicujus amore vel odio praetermittant. Quod si quis in opere Dei tepidus fuerit inventus, damnum dignitatis suae incurrat. (C. 1, X, De treug. et pace, I, 34.)

22. Innovamus ut presbyteri, monachi, clerici, conversi, peregrini, mercatores, rustici, euntes et redeuntes, et in agricultura existentes, et animalia quae semina portant ad agrum, congrua securitate laetentur. Nec quisquam alicui novas pedagiorum exactiones sine auctoritate regum et principum consensu statuere, aut statutas de novo tenere, aut veteres augmentare aliquo modo temere praesumat. Si quis autem contra hoc venire praesumpserit, et commonitus non destiterit, donec satisfaciat, communione careat christiana. (C. 2, X, De treug. et pace, I, 34 et c. 10, X, De cens., III, 39.)

23. Cum dicat apostolus abundantiorem honorem membris infirmioribus deferendum; ecclesiastici quidam quae sua sunt, non quae Jesu Christi, quaerentes, leprosis, qui cum sanis habitare non possunt et ad ecclesiam cum aliis convenire, ecclesias et coemeteria non permittant habere, nec proprio juvari ministerio sacerdotis. Quod quia procul a pietate christiana esse dignoscitur, de benignitate apostolica constituimus: ut ubicumque tot simul sub communi vita fuerint congregati, qui ecclesiam cum coemeterio constituere, et proprio gaudere valeant presbytero, sine contradictione permittantur habere. Caveant tamen, ut injuriosi veteribus ecclesiis de jure parochiali nequaquam existant. Quod namque eis pro pietate conceditur, ad aliorum injuriam nolumus redundare. Statuimus etiam, ut de hortis et nutrimentis animalium suorum decimas tribuere non cogantur. (C. 2, X, De eccles. aedific., III, 48.)

24. Ita quorumdam animos occupavit saeva cupiditas, ut cum glorientur nomine christiano, Saracenis arma, ferrum et lignamina galearum deferant, et pares eis, aut etiam superiores in malitia fiant, dum ad impugnandos christianos, arma eis et necessaria subministrant. Sunt etiam qui pro sua cupiditate in galeis et piraticis Saracenorum navibus regimen et curam gubernationis exercent. Tales igitur a communione ecclesiae praecisos, et excommunicationi pro sua iniquitate subjectos, et rerum suarum per saeculi principes catholicos et consules civitatum, privatione mulctari, et capientium servos, si capti fuerint, fore censemus. Praecipimus etiam, ut per ecclesias maritimarum urbium crebra et solemnis excommunicatio proferatur in eos. Excommunicationis quoque poenae subdantur, qui Romanos aut alios christianos pro negotiatione vel aliis causis honestis navigio vectos aut capere aut rebus suis spoliare praesumunt. Illi etiam qui christianos naufragia patientes, quibus secundum regulam fidei auxilio esse tenen-

[6] Eccles. 4:12.

tur, damnanda cupiditate rebus suis spoliare praesumunt, nisi ablata reddiderint, excommunicationi se noverint subjacere. (C.6, X, De Judaeis, V, 6 et c.3, X, De raptorib., V, 17.)

25. Quia in omnibus fere locis crimen usurarum ita inolevit, ut multi aliis negotiis praetermissis, quasi licite usuras exerceant, et qualiter utriusque Testimenti pagina condemnentur, nequaquam attendant; ideo constituimus, ut usurarii manifesti nec ad communionem admittantur altaris, nec christianam, si in hoc peccato decesserint, accipiant sepulturam. Sed nec eorum oblationem quisquam accipiat. Qui autem acceperit, aut eos christianae tradiderit sepulturae; et ea quae acceperit reddere compellatur, et donec ad arbitrium sui episcopi satisfaciat, ab officii sui maneat executione suspensus. (C.3, X, De usuris, V, 19.)

26. Judaei sive Saraceni nec sub alendorum puerorum obtentu, nec pro servitio, nec alia qualibet causa, christiana mancipia in domibus suit permittantur habere. Excommunicentur autem qui cum eis praesumpserint habitare. Testimonium quoque christianorum adversus Judaeos in omnibus causis, cum illi adversus christianos testibus suis utantur, recipiendum esse censemus; et anathemate decernimus feriendos, quicumque Judaeos christianis voluerint in hac parte praeferre, cum eos subjacere christianis oporteat, et ab eis pro sola humanitate foveri. Si qui praeterea, Deo inspirante, ad fidem se converterint christianam, a possessionibus suis nullatenus excludantur; cum melioris conditionis conversos ad fidem esse oporteat, quam antequam fidem acceperunt, habebantur. Si autem secus factum fuerit, principibus vel potestatibus eorumdem locorum sub poena excommunicationis injungimus, ut portionem haereditatis et bonorum suorum ex integro eis faciant exhiberi. (C.5, X, De Judaeis, V, 6 et c.21, X, De testibus, II, 20.)

27. Sicut ait beatus Leo, licet ecclesiastica disciplina sacerdotali contenta judicio cruentas non efficiat ultiones; catholicorum tamen principum constitutionibus adjuvatur, ut saepe quaerant homines salutare remedium, dum corporale super se metuunt evenire supplicium. Ea propter, quia in Gasconia, Albegesio, et partibus Tolosanis, et aliis locis, ita haereticorum, quos alii Catharos, alii Patrinos, alii Publicanos, alii aliis nominibus vocant, invaluit damnata perversitas, ut jam non in occulto, sicut aliqui, nequitiam suam exerceant, sed suum errorem publice manifestant, et ad suum consensum simplices attrahant et infirmos; eos et defensores eorum, et receptores anathemati decernimus subjacere; et sub anathemate prohibemus, ne quis eos in domibus vel in terra sua tenere, vel fovere vel negotiationem cum eis exercere praesumat. Si autem in hoc peccato decesserint, non sub nostrorum privilegiorum cuilibet indultorum obtentu, nec sub aliacumque occasione, aut oblatio fiat pro eis, aut inter christianos recipiant sepulturam. De Brabancionibus, et Aragonensibus, Navariis, Bascolis, Coterellis, et Triaverdinis, qui tantam in christianos inmanitatem exercent, ut nec ecclesiis nec Monasteriis deferant, non viduis et pupillis, non senibus et pueris, nec cuilibet parcant aetati aut sexui, sed more paganorum, omnia perdant et vastent; similiter constituimus, ut qui eos conduxerint, vel tenuerint, vel foverint per regiones, in quibus taliter debacchantur, in dominicis et aliis solemnibus diebus per ecclesias publice denuncientur, et eadem omnino sententia et poena cum praedictis haereticis habeantur adstricti, nec ad communionem recipiantur ecclesiae, nisi societate illa pestifera et haeresi abjuratis. Relaxatos autem se noverint a debito fidelitatis et hominii, ac totius obsequii, donec in tanta iniquitate permanserint, quicumque illis aliquo peccato teneтur annexi. Ipsis autem, cunctisque fidelibus in remissionem peccatorum injungimus, ut tantis cladibus se viriliter opponant, et contra eos armis

populum christianum tueantur. Confiscenturque eorum bona, et liberum sit principibus, hujusmodi homines subjicere servituti. Qui autem in vera poenitentia ibi decesserint, et peccatorum indulgentiam, et fructum mercedis aeternae se non dubitent percepturos. Nos etiam de misericordia Dei, et beatorum apostolorum Petri et Pauli auctoritate confisi, fidelibus christianis, qui contra eos arma susceperint, et ad episcoporum, seu aliorum praelatorum consilium ad eos decertando expugnandos, biennium de poenitentia injuncta relaxamus; aut si longiorem ibi moram habuerint, episcoporum discretioni, quibus hujus rei causa fuerit injuncta, committimus, ut ad eorum arbitrium, secundum modum laboris major eis indulgentia tribuatur. Illos autem, qui admonitioni episcoporum in hujuscemodi parte parere contempserunt, a perceptione corporis et sanguinis Domini jubemus fieri alienos. Interim vero eos, qui ardore fidei ad eos expugnandum, laborem justum assumpserint, sicut eos, qui sepulchrum dominicum visitant, sub ecclesiae defensione recipimus, et ab universis inquietationibus, tam in rebus, quam in personis, statuimus manere securos. Si vero quispiam vestrum praesumpserit eos molestare, per episcopum loci excommunicationis sententia feriatur; et tamdiu sententia servetur ab omnibus, donec et ablata reddantur, et de illatis damnis congrue iterum satisfaciat. Episcopi vero, sive presbyteri, qui talibus fortiter non restiterint, officii sui privatione mulctentur, donec misericordiam apostolicae sedis obtineant. (C.8, X, De haeret., V, 7.)

CANONES CONCILII LATERANENSIS IV (OECUMEN. XII)

ANNO 1215 HABITI[1]

1. Firmiter credimus, et simpliciter confitemur, quod unus solus est verus Deus, aeternus, et immensus, omnipotens, incommutabilis, incomprehensibilis et ineffabilis, Pater, et Filius, et Spiritus Sanctus; tres quidem personae, sed una essentia, substantia, seu natura simplex omnino. Pater a nullo, Filius autem a solo Patre, ac Spiritus Sanctus ab utroque pariter, absque initio semper et fine. Pater generans, Filius nascens, et Spiritus Sanctus procedens; consubstantiales et coaequales, coomnipotentes et coaeterni, unum universorum principium, creator omnium invisibilium et visibilium, spiritualium et corporalium, qui sua omnipotenti virtute simul ab initio temporis utramque de nihilo condidit creaturam, spiritualem et corporalem, angelicam videlicet et mundanam, ac deinde humanam, quasi communem ex spiritu et corpore constitutam. Diabolus enim et daemones alii, a Deo quidem natura creati sunt boni, sed ipsi per se facti sunt mali; homo vero diaboli suggestione peccavit.

Haec sancta trinitas secundum communem essentiam individua, et secundum personales proprietates discreta, per Mosen et sanctos prophetas, aliosque famulos suos juxta ordinatissimam dispositionem temporum, doctrinam humano generi tribuit salutarem. Et tandem unigenitus Dei Filius Jesus Christus a tota trinitate communiter incarnatus, ex Maria semper virgine Spiritus sancti cooperatione conceptus, verus homo factus, ex anima rationali et humana carne compositus, una in duabus naturis persona, viam vitae manifestius demonstravit. Qui cum secundum divinitatem sit immortalis et impassibilis; idem ipse secundum humanitatem factus est passibilis et mortalis; quin etiam pro salute humani generis in ligno crucis passus, et mortuus descendit ad inferos, resurrexit a mortuis, et ascendit in coelum. Sed descendit in anima, resurrexit in carne, ascenditque pariter in utroque; venturus in fine saeculi judicare vivos et mortuos, et redditurus singulis secundum opera sua, tam reprobis, quam electis. Qui omnes cum suis propriis corporibus resurgent, quae nunc gestant, ut recipiant secundum merita sua, sive bona fuerint, sive mala, illi cum diabolo poenam perpetuam, et isti cum Christo gloriam sempiternam.

Una vero est fidelium universalis ecclesia, extra quam nullus omnino salvatur. In qua idem ipse sacerdos, et sacrificium Jesus Christus; cujus corpus et sanguis in sacramento altaris sub speciebus panis et vini veraciter continentur; transsubstantiatis pane in corpus et vino in sanguinem, potestate divina, ut ad perficiendum mysterium unitatis accipiamus ipsi de suo quod accepit ipse de nostro. Et hoc utique sacramentum nemo potest conficere, nisi sacerdos, qui fuerit ordinatus secundum claves ecclesiae, quas ipse concessit apostolis et eorum successoribus Jesus Christus.

Sacramentum vero baptismi, quod ad invocationem individuae trinitatis, videlicet Patris, et Filii, et Spiritus Sancti, consecratur in aqua, tam parvulis quam adultis, in forma ecclesiae a quocumque rite collatum, proficit ad salutem.

Et si post susceptionem baptismi quisquam prolapsus fuerit in peccatum, per veram poenitentiam semper potest reparari. Non solum autem virgines et continentes, verum

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[1] Mansi, XXII, 981–1058; Hefele-Leclercq, V, 1324–1388.

etiam conjugati, per fidem rectam et operationem bonam placentes Deo, ad aeternam merentur beatitudinem pervenire. (C. 1, X, De summa trinit., I, 1.)

2. Damnamus ergo, et reprobamus libellum, sive tractatum, quem abbas Joachim edidit contra magistrum Petrum Lombardum de unitate seu essentia trinitatis, appellans ipsum haereticum et insanum, pro eo quod in suis dixit sententiis, quoniam quaedam summa res est Pater, et Filius, et Spiritus Sanctus, et illa non est generans, neque genita, nec procedens. Unde asserit, quod ille non tam trinitatem quam quaternitatem adstruebat in Deo, videlicet tres personas et illam communem essentiam quasi quartam; manifeste protestans, quod nulla est res, quae sit Pater et Filius et Spiritus Sanctus, nec est essentia, nec substantia, nec natura; quamvis concedat, quod Pater et Filius et Spiritus Sanctus sunt una essentia, una substantia, unaque natura. Verum unitatem hujusmodi non veram et propriam, sed quasi collectivam et similitudinariam esse fatetur; quemadmodum dicuntur multi homines unus populus, et multi fideles una ecclesia, juxta illud: *Multitudinis credentium erat cor unum et anima una.*[2] Et: *Qui adhaeret Deo, unus spiritus est cum illo.*[3] Item: *Qui plantat et qui rigat unum sunt.*[4] Et: *Omnes unum corpus sumus in Christo.*[5] Rursus in libro Regum (Ruth): *Populus meus et populus tuus unum sunt.*[6] Ad hanc autem sententiam astruendam illud potissimum verbum inducit, quod Christus de fidelibus inquit in evangelio: *Volo, Pater, ut sint unum in nobis, sicut et nos unum sumus, ut sint consummati in unum.*[7] Non enim, ut ait, fideles Christi sunt unum, id est, una quaedam res quae communis sit omnibus, sed hoc modo sunt unum, id est, una ecclesia propter catholicae fidei unitatem, et tandem unum regnum propter unionem indissolubilis caritatis. Quemadmodum in canonica Joannis epistola legitur: *Quia tres sunt qui testimonium dant in coelo, Pater, Verbum, et Spiritus Sanctus, et hi tres unum sunt.* Statimque subjungitur: *Et tres sunt qui testimonium dant in terra, spiritus, aqua, et sanguis, et hi tres unum sunt,*[8] sicut in codicibus quibusdam invenitur.

Nos autem, sacro et universali concilio approbante, credimus et confitemur cum Petro (Lombardo) quod una quaedam summa res est, incomprehensibilis quidem et ineffabilis quae veraciter est Pater, et Filius, et Spiritus Sanctus; tres simul personae, ac singulatim quaelibet earumdem. Et ideo in Deo trinitas est solummodo non quaternitas, quia quaelibet trium personarum est illa res, videlicet, substantia, essentia, sive natura divina, quae sola est universorum principium, praeter quod aliud inveniri non potest. Et illa res non est generans, neque genita, nec procedens; sed est Pater qui generat, Filius qui gignitur, et Spiritus Sanctus qui procedit; ut distinctiones sint in personis, et unitas in natura. Licet igitur alius sit Pater, alius sit Filius, alius Spiritus Sanctus, non tamen aliud; sed id quod est Pater, est Filius, et Spiritus Sanctus, idem omnino; ut secundum orthodoxam et catholicam fidem consubstantiales esse credantur. Pater enim ab aeterno Filium generando, suam substantiam ei dedit, juxta quod ipse testatur: *Pater quod dedit mihi, majus est omnibus.*[9] Ac dici non potest, quod partem suae substantiae illi dederit, et partem retinuerit ipse sibi, cum substantia Patris indivisibilis sit, utpote simplex omnino. Sed nec dici potest, quod Pater in Filium

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[2] Act. 4:32.
[3] Vide I Cor. 6:17.
[4] *Ibid.*, 3:8.
[5] Rom. 12:5.
[6] Ruth 1:16.
[7] Joan. 17:22 sq.
[8] Vide I Joan. 5:7 sq.
[9] Joan. 10:29.

transtulerit suam substantiam generando, quasi sic dederit eam Filio, quod non retinuerit ipsam sibi; alioquin desiisset esse substantia. Patet ergo, quod sine ulla diminutione Filius nascendo substantiam Patris accepit, et ita Pater et Filius habent eamdem substantiam; et sic eadem res est Pater, et Filius, necnon et Spiritus Sanctus ab utroque procedens. Cum ergo Veritas pro fidelibus suis ad Patrem orat: *Volo*, inquiens, *ut ipsi sint unum in nobis, sicut et nos unum sumus:* [10] hoc nomen, *unum*, pro fidelibus quidem accipitur, ut intelligatur unio caritatis in gratia; pro personis vero divinis, ut attendatur identitatis in natura unitas; quemadmodum Veritas alibi ait: *Estote perfecti sicut et Pater vester coelestis perfectus est;* [11] ac si diceret manifestius: Estote perfecti perfectione gratiae, sicut Pater vester coelestis perfectus est perfectione naturae, utraque videlicet suo modo: quia inter creatorem et creaturam non potest tanta similitudo notari, quin inter eos major sit dissimilitudo notanda.

Si quis igitur sententiam, sive doctrinam praefati Joachim in hac parte defendere vel approbare praesumpserit, tamquam haereticus ab omnibus confutetur. In nullo tamen per hoc Florensi monasterio, cujus ipse Joachim exitit institutor, volumus derogari; quoniam ibi et regularis institutio est et observantia salutaris; maxime cum idem Joachim omnia scripta sua nobis assignari mandaverit, apostolicae sedis judicio approbanda, seu etiam corrigenda, dictans epistolam, cui propria manu subscripsit, in qua firmiter confitetur, se illam fidem tenere quam Romana tenet ecclesia, quae cunctorum fidelium, disponente Domino, mater est et magistra. Reprobamus etiam et damnamus perversum dogma impii Amalrici, cujus mentem sic pater mendacii excaecavit, ut ejus doctrina non tam haeretica censenda sit quam insana. (C.2, X, De summa trinit., I, 1.)

3. Excommunicamus et anathematizamus omnem haeresim extollentem se adversus hanc sanctam orthodoxam, catholicam fidem, quam superius exposuimus: condemnantes universos haereticos, quibuscumque nominibus censeantur, facies quidem habentes diversas, sed caudas ad invicem colligatas, quia de vanitate conveniunt in idipsum. Damnati vero, saecularibus potestatibus praesentibus, aut eorum Ballivis, relinquantur animadversione debita puniendi, clericis prius a suis ordinibus degradatis; ita quod bona hujusmodi damnatorum, si laici fuerint, confiscentur; si vero clerici, applicentur ecclesiis, a quibus stipendia perceperunt. Qui autem inventi fuerint sola suspicione notabiles, nisi juxta considerationes suspicionis, qualitatemque personae, propriam innocentiam congrua purgatione monstraverint, anathematis gladio feriantur, et usque ad satisfactionem condignam ab omnibus evitentur; ita quod si per annum in excommunicatione persistiterint, ex tunc velut haeretici condemnentur. Moneantur autem et inducantur, et, si necesse fuerit, per censuram ecclesiasticam compellantur saeculares potestates, quibuscumque fungantur officiis, ut sicut reputari cupiunt et haberi fideles, ita pro defensione fidei praestent publice juramentum, quod de terris suae jurisdictioni subjectis universos haereticos ab ecclesia denotatos bona fide pro viribus exterminare studebunt: ita quod amodo, quandocumque quis fuerit in potestatem sive spiritalem, sive temporalem assumptus, hoc teneatur capitulum juramento firmare. Si vero dominus temporalis requisitus et monitus ab ecclesia, terram suam purgare neglexerit ab hac haeretica foeditate, per metropolitanum et ceteros comprovinciales episcopos excommunicationis vinculo innodetur. Et, si satisfacere contempserit infra annum, significetur hoc summo pontifici: ut ex tunc ipse vassallos ab ejus fidelitate denunciet absolutos, et terram exponat catholicis occupandam, qui eam exterminatis haereticis sine ulla contradictione possideant, et in fidei puritate conservent: salvo jure domini

[10] Joan. 17:22.
[11] Matt. 5:48.

principalis, dummodo super hoc ipse nullum praestet obstaculum, nec aliquod impedimentum opponat; eadem nihilominus lege servata circa eos qui non habent dominos principales. Catholici vero, qui crucis assumpto charactere ad haereticorum exterminium se accinxerint, illa gaudeant indulgentia illoque sancto privilegio sint muniti, quod accedentibus in terrae sanctae subsidium conceditur. Credentes vero, praeterea receptores, defensores, et fautores haereticorum, excommunicationi decernimus subjacere: firmiter statuentes, ut postquam quis talium fuerit excommunicatione notatus, si satisfacere contempserit infra annum, ex tunc ipso jure sit factus infamis, nec ad publica officia, seu consilia, nec ad eligendos aliquos ad hujusmodi, nec ad testimonium admittatur. Sit etiam intestabilis, ut nec testandi liberam habeat facultatem, nec ad haereditatis successionem accedat. Nullus praeterea ipsi super quocumque negotio, sed ipse aliis respondere cogatur. Quod si forte judex extiterit, ejus sententia nullam obtineat firmitatem, nec causae aliquae ad ejus audientiam perferantur. Si fuerit advocatus, ejus patrocinium nullatenus admittatur. Si tabellio, ejus instrumenta confecta per ipsum nullius penitus sint momenti, sed cum auctore damnato damnentur. Et in similibus idem praecipimus observari. Si vero clericus fuerit, ab omni officio et beneficio deponatur; ut in quo major est culpa, gravior exerceatur vindicta. Si qui autem tales postquam ab ecclesia denotati fuerint, evitare contempserint, excommunicationis sententia usque ad satisfactionem idoneam percellantur. Sane clerici non exhibeant hujusmodi pestilentibus ecclesiastica sacramenta, nec eos christianae praesumant sepulturae tradere, nec eleemosynas, aut oblationes eorum accipiant; alioquin suo priventur officio, ad quod nunquam restituantur absque indulto sedis apostolicae speciali. Similiter quilibet regulares, quibus hoc etiam infligatur, ut eorum privilegia in illa dioecesi non serventur, in qua tales excessus praesumpserint perpetrare. Quia vero nonnulli sub specie pietatis, virtutem ejus, juxta quod ait apostolus, abnegantes auctoritatem sibi vindicant praedicandi, cum idem apostolus dicat: *Quomodo praedicabunt, nisi mittantur?* omnes qui prohibiti, vel non missi, praeter auctoritatem ab apostolica sede, vel catholico episcopo loci susceptam publice vel privatim praedicationis officium usurpare praesumpserint, excommunicationis vinculo innodentur; et nisi quantocius resipuerint, alia competenti poena plectantur. Adjicimus insuper, ut quilibet archiepiscopus, vel episcopus, per se aut archidiaconum suum, vel idoneas personas honestas, bis aut saltem semel in anno propriam parochiam, in qua fama fuerit, haereticos habitare, circumeat; et ibi tres vel plures boni testimonii viros, vel etiam, si expedire videbitur, totam viciniam, jurare compellat; quod si quis ibidem haereticos sciverit, vel alios occulta conventicula celebrantes, seu a communi conversatione fidelium vita et morbus dissidentes, eos episcopo studeat indicare. Ipse autem episcopus ad praesentiam suam convocet accusatos; qui nisi se ab objecto reatu purgaverint, vel si post purgationem exhibitam in pristinam fuerint relapsi perfidiam, canonice puniantur. Si qui vero ex eis juramenti religionem obstinatione damnabili respuentes, jurare forte noluerint, ex hoc ipso tamquam haeretici reputentur. Volumus igitur et mandamus, et in virtute obedientiae districte praecipimus, ut ad haec efficaciter exequenda episcopi per dioeceses suas diligenter invigilent, si canonicam effugere voluerint ultionem. Si quis enim episcopus super expurgando de sua dioecesi haereticae pravitatis fermento negligens fuerit vel remissus; cum id certis indiciis apparuerit, et ab episcopali officio deponatur, et in locum ipsius alter substituatur idoneus, qui velit et possit haereticam confundere pravitatem. (C. 13, X, De haeret., V, 7.)

4. Licet Graecos diebus nostris ad obedientiam sedis apostolicae revertentes fovere et honorare velimus, mores ac ritus eorum, in quantum cum Domino possumus, sustinendo; in his tamen illis deferre nec volumus nec debemus, quae periculum

generant animarum, et ecclesiasticae derogant honestati. Postquam enim Graecorum ecclesia cum quibusdam complicibus ac fautoribus suis ab obedientia sedis apostolicae se subtraxit, in tantum Graeci coeperunt abominari Latinos, quod inter alia, quae in derogationem eorum impie committebant, si quando sacerdotes Latini super eorum celebrassent altaria, non prius ipsi sacrificare volebant in ipsis, quam ea tanquam per hoc inquinata, lavissent. Baptizatos etiam a Latinis et ipsi Graeci rebaptizare ausu temerario praesumebant; et adhuc, sicut accepimus, quidam agere hoc non verentur. Volentes ergo tantum ab ecclesia Dei scandalum amovere, sacro suadente concilio, districte praecipimus, ut talia de cetero non praesumant, conformantes se tamquam obedientiae filii sacrosanctae Romanae ecclesiae matris suae, ut sit unum ovile et unus pastor. Si quis autem quid tale praesumpserit, excommunicationis mucrone percussus, ab omni officio et beneficio ecclesiastico deponatur. (C.6, X, De bapt., III, 42.)

5. Antiqua patriarchalium sedium privilegia renovantes, sacra universali synodo approbante, sancimus ut post Romanam ecclesiam, quae disponente Domino super omnes alias ordinariae potestatis obtinet principatum, utpote mater universorum Christifidelium et magistra, Constantinopolitana primum, Alexandrina secundum, Antiochena tertium, Hierosolymitana quartum locum obtineant, servata cuilibet propria dignitate; ita quod postquam eorum antistites a Romano pontifice receperint pallium, quod est plenitudinis officii pontificalis insigne, praestito sibi fidelitatis et obedientiae juramento, licenter et ipsi suis suffraganeis pallium largiantur, recipientes pro se professionem canonicam, et pro Romana ecclesia sponsionem obedientiae ab eisdem. Dominicae vero crucis vexillum ante se faciant ubique deferri, nisi in urbe Romana, et ubicumque summus pontifex praesens extiterit, vel ejus legatus utens insigniis apostolicae dignitatis. In omnibus autem provinciis eorum jurisdictioni subjectis, ad eos, cum necesse fuerit, provocetur; salvis appellationibus ad sedem apostolicam interpositis, quibus est ab omnibus humiliter deferendum. (C.23, X, De privileg., V, 33.)

6. Sicut olim a sanctis patribus noscitur institutum, metropolitani singulis annis cum suis suffraganeis provincialia non omittant concilia celebrare. In quibus de corrigendis excessibus, et moribus reformandis, praesertim in clero, diligentem habeant cum Dei timore tractatum, canonicas regulas, et maxime quae statutae sunt in hoc generali concilio, relegentes, ut eas faciant observari, debitam poenam transgressoribus infligendo. Ut autem id valeat efficacius adimpleri, per singulas dioeceses statuant idoneas personas, providas videlicet et honestas, quae per totum annum simpliciter et de plano absque ulla jurisdictione solicite investigent quae correctione, vel reformatione sint digna, et ea fideliter perferant ad metropolitanum et suffraganeos et alios in concilio subsequenti; ut super his et aliis, prout utilitati et honestati congruerit, provida deliberatione procedant; et quae statuerint, faciant observari, publicantes ea in episcopalibus synodis annuatim per singulas dioeceses celebrandis. Quisquis autem hoc salutare statutum neglexerit adimplere, a suis beneficiis et executione officii suspendatur, donec per superioris arbitrium ejus suspensio relaxetur. (C.25, X, De accusat., V, 1.)

7. Irrefragabili constitutione sancimus, ut ecclesiarum praelati ad corrigendos subditorum excessus, maxime clericorum, et reformandos mores, prudenter et diligenter intendant, ne sanguis eorum de suis manibus requiratur. Ut autem correctionis et reformationis officium libere valeant exercere, decernimus, ut executionem ipsorum nulla consuetudo vel appellatio valeat impedire, nisi formam excesserint in talibus observandam. Excessus tamen canonicorum ecclesiae cathedralis, qui consueverunt corrigi per capitulum, per ipsum in illis ecclesiis, quae talem hactenus consuetudinem

habuerunt, ad commonitionem vel jussionem episcopi, corrigantur infra terminum competentem ab episcopo praefigendum. Alioquin ex tunc episcopus Deum habens prae oculis, omni contradictione cessante, ipsos prout animarum cura exegerit, per censuram ecclesiasticam corrigere non postponat. Sed et alios eorum excessus corrigere non omittat, prout animarum causa requirit, debito tamen ordine in omnibus observato. Ceterum si canonici absque manifesta et rationabili causa, maxime in contemptum episcopi, cessaverint a divinis, episcopus nihilominus, si voluerit, celebret in ecclesia cathedrali; et metropolitanus ad querelam ipsius, tamquam super hoc delegatus a nobis taliter eos per censuram ecclesiasticam cognita veritate castiget, quod poenae metu talia de cetero non praesumant. Provideant itaque diligenter ecclesiarum praelati, ut hoc salutare statutum ad quaestum pecuniae, vel gravamen aliud non convertant, sed illud studiose ac fideliter exequantur, si canonicam voluerint effugere ultionem; quoniam super his apostolica sedes, auctore Domino, attentissime vigilabit. (C. 13, X, De offic. jud. ordin., I, 31.)

8. Qualiter et quando debeat praelatus procedere ad inquirendum et puniendum subditorum excessus, ex auctoritatibus Novi et Veteris Testamenti colligitur evidenter; ex quibus postea processerunt canonicae sanctiones, sicut olim aperte distinximus, et nunc sacri approbatione concilii confirmamus. Legitur enim in evangelio, quod villicus ille qui diffamatus erat apud dominium suum, quasi dissipasset bona ipsius, audivit ab illo: *Quid hoc audio de te? Redde rationem villicationis tuae; jam enim non poteris villicare.*[12] Et in Genesi Dominus ait: *Descendam, et videbo, utrum clamorem, qui venit ad me, opere compleverint.*[13] Ex quibus auctoritatibus manifeste comprobatur, quod non solum cum subditus, verum etiam cum praelatus excedit, si per clamorem et famam ad aures superioris pervenerint, non quidem a malevolis et maledicis, sed a providis et honestis; nec semel tantum, sed saepe, quod clamor innuit, et diffamatio manifestat, debet coram ecclesiae senioribus veritatem diligentius perscrutari; ut, si rei poposcerit qualitas, canonica districtio culpam feriat delinquentis; non tamquam sit actor et judex sed quasi deferente fama, vel denunciante clamore, officii sui debitum exequatur. Licet autem hoc sit observandum in subditis, diligentius tamen observandum est in praelatis, qui quasi signum sunt positi ad sagittam, et quia non possunt omnibus complacere, cum ex officio teneantur non solum arguere, sed etiam increpare, quin etiam interdum suspendere, nonnunquam vero ligare; frequenter odium multorum incurrunt et insidias patiuntur. Ideo sancti patres provide statuerunt, ut accusatio praelatorum non facile admittatur, ne concussis columnis corruat aedificium; nisi diligens adhibeatur cautela, per quam non solum falsae sed etiam malignae criminationi janua praecludatur. Verum ita voluerunt providere praelatis, ne criminarentur injuste, ut tamen caverent ne delinquerent insolenter; contra morbum utrumque invenientes congruam medicinam, videlicet, ut criminalis accusatio, quae ad diminutionem capitis, id est, degradationem intenditur, nisi legitima praecedat inscriptio, nullatenus admittatur. Sed cum super excessibus suis quisquam fuerit infamatus, ita ut jam clamor ascendat, qui diutius sine scandalo dissimulari non possit, vel sine periculo tolerari absque dubitationis scrupulo, ad inquirendum et puniendum ejus excessus, non ex odii fomite, sed caritatis procedatur affectu; quatenus si gravis fuerit excessus, etsi non degradetur ab ordine, ab administratione tamen amoveatur omnino, quod est secundum evangelicam sententiam, a villicatione villicum amoveri, qui non potest villicationis suae dignam reddere rationam. Debet igitur esse praesens is, contra quem facienda est inquisitio, nisi se per contumaciam absentaverit; et

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[12] Luc. 16:2.
[13] Gen. 18:21.

exponenda sunt ei illa capitula, de quibus fuerit inquirendum, ut facultatem habeat defendendi seipsum. Et non solum dicta, sed etiam nomina ipsa testium sunt ei, ut quid et a quo sit dictum appareat, publicanda; necnon exceptiones, et replicationes legitimae admittendae, ne per suppressionem nominum, infamandi, per exceptionum vero exclusionem, deponendi falsum, audacia praebeatur. Ad corrigendos itaque subditorum excessus tanto diligentius debet praelatus assurgere, quanto damnabilius eorum offensas desereret incorrectas. Contra quos, ut de notoriis excessibus taceatur, etsi tribus modis possit procedi, per accusationem videlicet, denunciationem et inquisitionem eorum; ut tamen in omnibus diligens adhibeatur cautela, ne forte per leve compendium ad grave dispendium veniatur; sicut accusationem legitima praecedere debet inscriptio, sic et denunciationem caritativa admonitio, et inquisitionem clamosa insinuatio praevenire; illo semper adhibito moderamine, ut juxta formam judicii, sententiae quoque forma dictetur. Hunc tamen ordinem circa regulares personas non credimus usquequaque servandum, quae, cum causa requirit, facilius et liberius a suis possunt administrationibus amoveri. C. 24, X, De accusat., V, 1.)

9. Quoniam in plerisque partibus intra eamdem civitatem atque dioecesim permixti sunt populi diversarum linguarum, habentes sub una fide varios ritus et mores, districte praecipimus, ut pontifices hujusmodi civitatum sive dioecesum provideant viros idoneos, qui secundum diversitates rituum et linguarum divina officia illis celebrent et ecclesiastica sacramenta ministrent, instruendo eos verbo pariter et exemplo. Prohibemus autem omnino, ne una eademque civitas sive dioecesis diversos pontifices habeat, tamquam unum corpus diversa capita, quasi monstrum. Sed si propter praedictas causas urgens necessitas postulaverit, pontifex loci catholicum praesulem nationibus illis conformem provida deliberatione constituat sibi vicarium in praedictis, qui ei per omnia sit obediens et subjectus. Unde si quis aliter se ingesserit, excommunicationis se noverit mucrone percussum, et si nec sic resipuerit ab omni ecclesiastico ministerio deponatur, adhibito, si necesse fuerit, brachio saeculari, ad tantam insolentiam compescendam. (C. 14, X, De offic. jud. ordin., I, 31.)

10. Inter cetera quae ad salutem spectant populi christiani, pabulum verbi Dei permaxime noscitur sibi esse necessarium, quia sicut corpus materiali, sic anima spirituali cibo nutritur, eo quod *non in solo pane vivit homo, sed in omni verbo quod procedit de ore Dei.*[14] Unde cum saepe contingat, quod episcopi propter occupationes multiplices, vel invaletudines corporales, aut hostiles incursus seu occasiones alias, ne dicamus defectum scientiae, quod in eis est reprobandum omnino, nec de cetero tolerandum, per se ipsos non sufficiunt ministrare populo verbum Dei, maxime per amplas dioeceses et diffusas, generali constitutione sancimus, ut episcopi viros idoneos ad sanctae praedicationis officium salubriter exequendum assumant, potentes in opere et sermone, qui plebes sibi commissas vice ipsorum, cum per se idem nequiverint, solicite visitantes, eas verbo aedificent et exemplo, quibus ipsi, cum indeguerint, congrua necessaria ministrent, ne pro necessariorum defectu compellantur desistere ab incepto. Unde praecipimus, tam in cathedralibus quam in aliis conventualibus ecclesiis viros idoneos ordinari, quos episcopi possint coadjutores et cooperatores habere, non solum in praedicationis officio, verum etiam in audiendis confessionibus et poenitentiis injungendis, ac ceteris quae ad salutem pertinent animarum. Si quis autem hoc neglexerit adimplere, districte subjaceat ultioni. (C. 15, X, De offic. jud. ordin., I, 31.)

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[14] Matt. 4:4.

11. Quia nonnullis propter inopiam, et legendi studium et opportunitas proficiendi subtrahitur, in Lateranensi concilio pia fuit institutione provisum, ut per unamquamque cathedralem ecclesiam magistro, qui clericos ejusdem ecclesiae, aliosque scholares pauperes gratis instrueret, aliquod competens beneficium praeberetur, quo et docentis relevaretur necessitas, et via pateret discentibus ad doctrinam. Verum quoniam in multis ecclesiis id minime observatur, nos praedictum roborantes statutum, adjicimus, ut non solum in qualibet cathedrali ecclesia sed etiam in aliis, quarum sufficere poterunt facultates, constituatur magister idoneus a praelato cum capitulo, seu majori et saniori parte capituli, eligendus, qui clericos ecclesiarum ipsarum et aliarum gratis in grammaticae facultate ac aliis instruat juxta posse. Sane metropolitana ecclesia theologum nihilominus habeat, qui sacerdotes et alios in sacra pagina doceat, et in his praesertim informet, quae ad curam animarum spectare noscuntur. Assignetur autem cuilibet magistrorum a capitulo unius praebendae proventus, et pro theologo a metropolitano tantumdem; non quod propter hoc efficiatur canonicus, sed tamdiu reditus ipsius percipiat quamdiu perstiterit in docendo. Quod si forte de duobus magistris metropolitana ecclesia gravetur, theologo juxta modum praedictum ipsa provideat; grammatico vero in alia ecclesia suae civitatis sive dioecesis, quod sufficere valeat, faciat provideri. (C.4, X, De magist., V, 5.)

12. In singulis regnis sive provinciis fiat de triennio in triennium, salvo jure dioecesanorum pontificum, commune capitulum abbatum atque priorum abbates proprios non habentium, qui non consueverunt tale capitulum celebrare; ad quod universi conveniant, praepeditionem canonicam non habentes, apud unum de monasteriis ad hoc aptum; hoc adhibito moderamine, ut nullus eorum plus quam sex evectiones et octo personas adducat. Advocent autem caritative in hujus novitatis primordiis duos Cisterciensis ordinis abbates vicinos ad praestandum sibi consilium et auxilium opportunum, cum sint in hujusmodi capitulis celebrandis longa consuetudine plenius informati. Qui absque contradictione duos sibi de ipsis associent, quos viderint expedire. Ac ipsi quatuor praesint capitulo universo, ita quod ex hoc nullus eorum auctoritatem praelationis assumat; unde, quum expedierit, provida possint deliberatione mutari. Hujusmodi vero capitulum aliquot certis diebus continue juxta morem Cisterciensis ordinis celebretur, in quo diligens habeatur tractatus de reformatione ordinis et observatione regulari; et quod statutum fuerit, illis quatuor approbantibus, ab omnibus inviolabiliter observetur, omni excusatione et contradictione ac appellatione remotis, proviso nihilominus, ubi sequenti termino debeat capitulum celebrari; et qui convenerint, vitam ducant communem, et faciant proportionaliter simul omnes communes expensas, ita quod si non omnes potuerint in eisdem, saltem plures simul in diversis domibus commorentur. Ordinentur etiam in eodem capitulo religiosae ac circumspectae personae, quae singulas abbatias ejusdem regni sive provinciae non solum monachorum sed etiam monialium secundum formam sibi praefixam, vice nostra, studeant visitare, corrigentes et reformantes quae correctionis et reformationis officio viderint indigere, ita quod si rectorem loci cognoverint ab administratione penitus amovendum, denuncient episcopo proprio, ut illum amovere procuret; quod si non fecerit, ipsi visitatores hoc referant ad apostolicae sedis examen. Hoc ipsum regulares canonicos secundum ordinem suum volumus et praecipimus observare. Si vero in hac novitate quidquam difficultatis emerserit, quod per praedictas personas nequeat expediri, ad apostolicae sedis judicium absque scandalo referatur, ceteris irrefragabiliter observatis, quae concordi fuerint deliberatione provisa. Porro dioecesani episcopi monasteria sibi subjecta ita studeant reformare, ut cum ad ea praedicti visitatores accesserint, plus in illis inveniant quod commendatione quam quod correctione sit dignum; attentissime praecaventes ne per eos dicta monasteria indebitis oneribus

aggraventur. Quia sic volumus superiorum jura servari, ut inferiorum nolimus injurias sustinere. Ad hoc districte praecipimus tam dioecesanis episcopis, quam personis quae praeerunt capitulis celebrandis, ut per censuram ecclesiasticam, appellatione remota, compescant advocatos, patronos, vicedominos, rectores et consules, magnates et milites, seu quoslibet alios, ne monasteria praesumant offendere in personis ac rebus; ac si fortisan offenderint, eos ad satisfactionem compellere non omittant, ut liberius et quietius omnipotenti Deo valeant famulari. (C. 7, X, De statu monach., III, 35.)

13. Ne nimia religionum diversitas gravem in ecclesia Dei confusionem inducat, firmiter prohibemus, ne quis de cetero novam religionem inveniat, sed quicumque voluerit ad religionem converti, unam de approbatis assumat. Similiter qui voluerit religiosam domum fundare de novo, regulam et institutionem accipiat de religionibus approbatis. Illud etiam prohibemus, ne quis in diversis monasteriis locum monachi habere praesumat, nec unus abbas pluribus monasteriis praesidere. (C. 9, X, De relig. domibus, III, 36.)

14. Ut clericorum mores et actus in melius reformentur, continenter et caste vivere studeant universi, praesertim in sacris ordinibus constituti, ab omni libidinis vitio praecaventes, maxime illo, propter quod ira Dei venit de coelo in filios diffidentiae, quatenus in conspectu Dei omnipotentis puro corde ac mundo corpore valeant ministrare. Ne vero facilitas veniae incentivum tribuat delinquendi, statuimus, ut qui deprehensi fuerint incontinentiae vitio laborare, prout magis aut minus peccaverint, puniantur secundum canonicas sanctiones, quas efficacius et districtius praecipimus observari, ut quos divinus timor a malo non revocat, temporalis saltem poena a peccato cohibeat. Si quis igitur hac de causa suspensus, divina celebrare praesumpserit, non solum ecclesiasticis beneficiis spolietur, verum etiam pro hac duplici culpa perpetuo deponatur. Praelati vero qui tales praesumpserint in suis iniquitatibus sustinere, maxime obtentu pecuniae vel alterius commodi temporalis, pari subjaceant ultioni. Qui autem secundum regionis suae morem non abdicarunt copulam conjugalem, si lapsi fuerint, gravius puniantur, cum legitimo matrimonio possint uti. (C. 13, X, De vit. et honest. cler., III, 1.)

15. A crapula et ebrietate omnes clerici diligenter abstineant. Unde vinum sibi temperent et se vino; nec ad bibendum quispiam incitetur, cum ebrietas et mentis inducat exilium, et libidinis provocet incentivum. Unde illum abusum decernimus penitus abolendum, quo in quibusdam partibus ad potus aequales suo modo se obligant potatores, et ille judicio talium plus laudatur qui plures inebriat et calices fecundiores exhaurit. Si quis autem super his culpabilem se exhibuerit, nisi a superiore commonitus satisfecerit competenter, a beneficio vel officio suspendatur. Venationem et aucupationem universis clericis interdicimus, unde nec canes nec aves ad aucupandum habere praesumant. (C. 14, X, De vit. et honest. cler., III, 1.)

16. Clerici officia vel commercia saecularia non exerceant, maxime inhonesta. Mimis, joculatoribus et histrionibus non intendant, et tabernas prorsus evitent, nisi forte causa necessitatis in itinere constituti. Ad aleas vel taxillos non ludant, nec hujusmodi ludis intersint. Coronam et tonsuram habeant congruentem, et se in officiis divinis et aliis bonis exerceant studiis diligenter. Clausa deferant desuper indumenta, nimia brevitate vel longitudine non notanda. Pannis rubeis aut viridibus, necnon manicis aut sotularibus constitiis seu rostratis, fraenis, sellis, pectoralibus et calcaribus deauratis, aut aliam superfluitatem gerentibus non utantur. Cappas manicatas ad divinum officium intra ecclesiam non gerant; sed nec alibi, qui sunt in sacerdotio vel personatibus

constituti, nisi justi causa timoris exegerit habitum transformari. Fibulas omnino non ferant, neque corrigias auri vel argenti ornatum habentes, sed nec annulos, nisi quibus competit ex officio dignitatis. Pontifices autem in publico et in ecclesia superindumentis lineis omnes utantur, nisi monachi fuerint, quos oportet deferre habitum monachalem; palliis diffibulatis non utantur in publico, sed vel post collum, vel ante pectus hinc inde connexis. (C.15, X, De vit. et honest. cler., III, 1.)

17. Dolentes referimus, quod non solum quidam minores clerici, verum etiam aliqui ecclesiarum praelati circa comessationes superfluas et confabulationes illicitas, ut de aliis taceamus, fere medietatem noctis expendunt, et somno residuum relinquentes, vix ad diurnum concentum avium excitantur, transcurrendo undique continuata syncopa matutinum. Sunt et alii qui missarum celebrant solemnia vix quater in anno, et, quod deterius est, interesse contemnunt; et si quando, dum haec celebrantur, intersunt, chori silentium fugientes, intendunt exterius collocutionibus laicorum; dumque auditum ad indebitos sermones effundunt, aures intentas non porrigunt ad divina. Haec igitur et similia sub poena suspensionis penitus inhibemus; districte praecipientes in virtute obedientiae, ut divinum officium diurnum pariter et nocturnum, quantum eis Deus dederit, studiose celebrent pariter et devote. (C.9, X, De celebr. missar., III, 41.)

18. Sententiam sanguinis nullus clericus dictet aut proferat, sed nec sanguinis vindictam exerceat, aut ubi exercetur intersit. Si quis autem hujusmodi occasione statuti ecclesiis vel personis ecclesiasticis aliquod praesumpserit inferre dispendium, per censuram ecclesiasticam compescatur. Nec quisquam clericus litteras scribat, aut dictet pro vindicta sanguinis destinendas. Unde in curiis principum haec solicitudo non clericis sed laicis committatur. Nullus quoque clericus rottariis aut balistariis, aut hujusmodi viris sanguinum praeponatur, nec illam chirurgiae partem subdiaconus, diaconus vel sacerdos exerceant, quae ad ustionem vel incisionem inducit. Nec quisquam purgationi aquae serventis vel frigidae, seu ferri candentis, ritum cujuslibet benedictionis aut consecrationis impendat, salvis nihilominus prohibitionibus de monomachiis sive duellis antea promulgatis. (C.9, X, Ne cler. vel monach., III, 50.)

19. Relinqui nolumus incorrectum quod quidam clerici sic exponunt ecclesias supellectilibus propriis, et etiam alienis, ut potius domus laicae quam Dei basilicae videantur, non considerantes, quod Dominus non sinebat, ut vas transferretur per templum. Sunt et alii, qui non solum ecclesias dimittunt incultas, verum etiam vasa ministerii, et vestimenta ministrorum, ac pallas altaris, necnon et ipsa corporalia tam immunda relinquant, quod interdum aliquibus sunt horrori. Quia vero zelus nos comedit domus Dei, firmiter inhibemus, ne hujusmodi supellectilia in ecclesiis admittantur, nisi propter hostiles incursus, aut incendia repentina, seu alias necessitates urgentes, ad eas oporteat habere refugium. Sic tamen ut necessitate cessante, res in loca pristina reportentur. Praecipimus quoque ut oratoria, vasa, corporalia et vestimenta praedicta, munda et nitida conserventur. Nimis enim videtur absurdum, in sacris sordes negligere, quae dedecerent etiam in profanis. (C.2, X, De custod. eucharist., III, 44.)

20. Statuimus, ut in cunctis ecclesiis chrisma et eucharistia sub fideli custodia, clavibus adhibitis, conserventur, ne possit ad illa temeraria manus extendi, ad aliqua horribilia vel nefaria exercenda. Si vero is ad quem spectat custodia, ea incaute reliquerit, tribus mensibus ab officio suspendatur. Et si per ejus incuriam aliquid nefandum inde contigerit, graviori subjaceat ultioni. (C.1, X, De custod. eucharist., III, 44.)

21. Omnis utriusque sexus fidelis, postquam ad annos discretionis pervenerit, omnia sua solus peccata confiteatur fideliter, saltem semel in anno, proprio sacerdoti, et injunctam sibi poenitentiam studeat pro viribus adimplere, suscipiens reverenter ad minus in Pascha eucharistiae sacramentum; nisi forte de consilio proprii sacerdotis, ob aliquam rationabilem causam ad tempus ab ejus perceptione duxerit abstinendum; alioquin et vivens ab ingressu ecclesiae arceatur, et moriens christiana careat sepultura. Unde hoc salutare statutum frequenter in ecclesiis publicetur, ne quisquam ignorantiae caecitate velamen excusationis assumat. Si quis autem alieno sacerdoti voluerit justa de causa confiteri peccata, licentiam prius postulet et obtineat a proprio sacerdote, cum aliter ille ipse non possit solvere, vel ligare. Sacerdos autem sit discretus et cautus, ut more periti medici superinfundat vinum et oleum vulneribus sauciati; diligenter inquirens et peccatoris circumstantias et peccati, per quas prudenter intelligat, quale illi consilium debeat exhibere, et cujusmodi remedium adhibere, diversis experimentis utendo ad sanandum aegrotum. Caveat autem omnino, ne verbo vel signo vel alio quovis modo prodat aliquantenus peccatorem; sed si prudentiori consilio indeguerit, illud absque ulla expressione personae caute requirat; quoniam qui peccatum in poenitentiali judicio sibi detectum praesumpserit revelare, non solum a sacerdotali officio deponendum decernimus, verum etiam ad agendam perpetuam poenitentiam in arctum monasterium detrudendum. (C. 12, X, De poenitent. et remiss., V, 38.)

22. Cum infirmitas corporalis nonnunquam ex peccato proveniat, dicente Domino languido quem sanaverat: *Vade, et amplius noli peccare, ne deterius aliquid tibi contingat;*[15] decreto praesenti statuimus et districte praecipimus medicis corporum, ut cum eos ad infirmos vocari contigerit, ipsos ante omnia moneant et inducant, quod medicos advocent animarum; ut postquam infirmis fuerit de spirituali salute provisum, ad corporalis medicinae remedium salubrius procedatur, cum causa cessante cesset effectus. Hoc quidem inter alia huic causam dedit edicto, quod quidam in aegritudinis lecto jacentes, cum eis a medicis suadetur, ut de animarum salute disponant, in desperationis articulum incidunt, unde facilius mortis periculum incurrunt. Si quis autem medicorum hujus nostrae constitutionis, postquam per praelatos locorum fuerit publicata, transgressor extiterit, tandiu ab ingressu ecclesiae arceatur, donec pro transgressione hujusmodi satisfecerit competenter. Ceterum cum anima sit multo pretiosior corpore, sub interminatione anathematis prohibemus, ne quis medicorum pro corporali salute aegroto suadeat quod in periculum animae convertatur. (C. 13, X, De poenit. et remiss., V, 38.)

23. Ne pro defectu pastoris gregem dominicum lupus rapax invadat, aut in facultatibus suis ecclesia viduata grave dispendium patiatur; volentes in hoc etiam occurrere periculis animarum, et ecclesiarum indemnitatibus providere, statuimus, ut ultra tres menses cathedralis vel regularis ecclesia praelato non vacet; infra quos, justo impedimento cessante, si electio celebrata non fuerit, qui eligere debuerant, eligendi potestate careant ea vice, ac ipsa eligendi potestas ad eum, qui proximo praeesse dignoscitur, devolvatur. Is vero, ad quem devoluta fuerit potestas, Dominum habens prae oculis, non differat ultra tres menses, cum capituli sui consilio et aliorum virorum prudentium viduatam ecclesiam de persona idonea, ipsius quidem ecclesiae, vel alterius, si digna non reperiatur in illa, canonice ordinare, si canonicam voluerit effugere ultionem. (C. 41, X, De elect., I, 6.)

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[15] Joan. 5:14.

24. Quia propter electionum formas diversas, quas quidam invenire conantur, et multa impedimenta proveniunt, et magna pericula imminent ecclesiis viduatis; statuimus, ut cum electio fuerit celebranda, praesentibus omnibus qui debent et volunt et possunt commode interesse, assumantur tres de collegio fide digni, qui secreto et singillatim vota cunctorum diligenter exquirant, et in scriptis redacta mox publicent in communi, nullo prorsus appellationis obstaculo interjecto; ut is collatione adhibita eligatur, in quem omnes, vel major, vel sanior pars capituli consentit. Vel saltem eligendi potestas aliquibus viris idoneis committatur, qui vice omnium ecclesiae viduatae provideant de pastore. Aliter electio facta non valeat, nisi forte communiter esset ab omnibus, quasi per inspirationem divinam absque vitio celebrata. Qui vero contra praedictas formas eligere attentaverint, eligendi ea vice potestate priventur. Illud penitus interdicimus, ne quis in electionis negotio procuratorem constituat, nisi sit absens in eo loco de quo debeat advocari, justoque impedimento detentus venire non possit; super quo, si fuerit opus, fidem faciat juramento, et tunc, si voluerit, uni committat de ipso collegio vicem suam. Electiones quoque clandestinas reprobamus, statuentes, ut quam cito electio fuerit celebrata, solemniter publicetur. (C.42, X, De elect., I, 6.)

25. Quisquis electioni de se factae per saecularis potestatis abusum consentire praesumpserit contra canonicam libertatem, et electionis commodo careat, et ineligibilis fiat, nec absque dispensatione ad aliquam valeat eligi dignitatem. Qui vero electionem hujusmodi, quam ipso jure irritam esse censemus, praesumpserint celebrare, ab officiis et beneficiis penitus per triennium suspendantur, eligendi tunc potestate privati. (C.43, X, De elect., I, 6.)

26. Nihil est quod ecclesiae Dei magis officiat, quam quod indigni assumantur praelati ad regimen animarum. Volentes igitur huic morbo necessariam adhibere medelam, irrefragabili constitutione sancimus, quatenus cum quisquam fuerit ad regimen animarum assumptus, ipse, ad quem pertinet ipsius confirmatio, diligenter examinet, et electionis processum, et personam electi, ut cum omnia rite concurrerint, munus ei confirmationis impendat, quia, si secus fuerit incaute praesumptum, non solum dejiciendus est indigne promotus, verum etiam indigne promovens puniendus. Ipsum quoque decernimus hac animadversione puniri, ut cum de ipsius constiterit negligentia, maxime si hominem insufficientis scientiae, vel inhonestae vitae, aut aetatis illegitimae approbaverit; non solum confirmandi primum successorem illius careat potestate, verum etiam ne aliquo casu poenam effugiat, a perceptione proprii beneficii suspendatur, quousque si aequum fuerit, indulgentiam valeat promereri. Si convictus fuerit in hoc per malitiam excessisse, graviori subjaceat ultioni. Episcopi quoque tales ad sacros ordines et ecclesiasticas dignitates promovere procurent, qui commissum sibi officium digne valeant adimplere, si et ipsi canonicam cupiunt effugere ultionem. Ceterum qui ad Romanum pertinent immediate pontificem, ad percipiendam sui confirmationem officii, ejus se conspectui, si commode potest fieri, personaliter repraesentent, vel personas transmittant idoneas, per quas diligens inquisitio super electionis processu et electi possit haberi; ut sic demum per ipsius circumspectionem consilii sui plenitudinem assequantur officii, cum eis nihil obstiterit de canonicis institutis; ita quod interim valde remoti, videlicet ultra Italiam constituti, si electi fuerint in concordia, dispensative propter necessitates et utilitates ecclesiarum, in spiritualibus et temporalibus administrent; sic tamen ut de rebus ecclesiasticis nil penitus alienent. Munus vero consecrationis seu benedictionis recipiant; sicut hactenus recipere consueverunt. (C.44, X, De elect., I, 6.)

27. Cum sit ars artium regimen animarum, districte praecipimus ut episcopi promovendos in sacerdotes diligenter instruant et informent, vel per se ipsos vel per alios viros idoneos, super divinis officiis et ecclesiasticis sacramentis, qualiter ea rite valeant celebrare; quoniam si ignaros et rudes de cetero ordinare praesumpserint, quod quidem facile poterit deprehendi, et ordinatores et ordinatos gravi decrevimus subjacere ultioni. Satius est enim, maxime in ordinatione sacerdotum, paucos bonos quam multos malos habere ministros; quia si caecus caecum duxerit, ambo in foveam dilabuntur. (C. 14, X, De aetat. et qualit., I, 14.)

28. Quidam licentiam cedendi cum instantia postulantes, ea obtenta, cedere praetermittunt. Sed cum in postulatione cessionis hujusmodi, aut ecclesiarum commoda, quibus praesunt, aut salutem videantur propriam attendisse, quorum neutrum suasionibus aliquorum quaerentium quae sunt sua, seu etiam levitate qualibet, volumus impediri, ad cedendum eos decernimus compellendos. (C. 12, X, De renunciat., I, 9.)

29. De multa providentia fuit in Lateranensi consilio prohibitum, ut nullus diversas dignitates ecclesiasticas et plures ecclesias parochiales reciperet contra sacrorum canonum instituta; alioquin et recipiens sic receptum amitteret et largiendi potestate conferens privaretur. Quia vero propter praesumptiones et cupiditates quorumdam nullus hactenus fructus aut rarus de praedicto statuto provenit; nos evidentius et expressius occurrere cupientes, praesenti decreto statuimus, ut quicumque receperit aliquod beneficium habens curam animarum annexam, si prius tale beneficium obtinebat, eo sit ipso jure privatus; et si forte illud retinere contenderit, alio etiam spolietur. Is quoque, ad quem prioris spectat donatio, illud post receptionem alterius libere conferat, cui merito viderit conferendum; et si ultra tres menses conferre distulerit, non solum ad alium secundum statutum Lateranensis concilii ejus collatio devolvatur, verum etiam tantum de suis cogatur proventibus in utilitatem ecclesiae, cujus illud est beneficium, assignare, quantum a tempore vacationis ipsius constiterit ex eo esse perceptum. Hoc idem in personatibus decernimus observandum, addentes, ut in eadem ecclesia nullus plures dignitates aut personatus habere praesumat etiamsi curam non habeant animarum. Circa sublimes tamen et litteratas personas, quae majoribus sunt beneficiis honorandae, cum ratio postulaverit, per sedem apostolicam poterit dispensari. (C. 28, X, De praebend., III, 5.)

30. Grave nimis est et absurdum, quod quidam praelati ecclesiarum, cum possint viros idoneos ad ecclesiastica beneficia promovere, assumere non verentur indignos, quibus nec morum honestas nec litterarum scientia suffragatur, carnalitatis sequentes affectum, non judicium rationis. Unde quanta ecclesiis damna proveniant, nemo sanae mentis ignorat. Volentes igitur huic morbo mederi, praecipimus ut praetermissis indignis, assumant idoneos, qui Deo et ecclesiis velint et valeant gratum impendere famulatum, fiatque de hoc in provinciali concilio diligens inquisitio annuatim; ita quod qui post primam et secundam correctionem fuerit repertus culpabilis, a conferendis beneficiis per ipsum concilium suspendatur; instituta in eodem concilio persona provida et honesta, quae suppleat suspensi defectum in beneficiis conferendis; et hoc ipsum circa capitula, quae in hoc deliquerint, observetur. Metroplitani vero delictum superioris judicio relinquatur ex parte concilii nuntiandum. Ut autem haec salubris provisio pleniorem consequatur effectum, hujusmodi suspensionis sententia praeter Romani pontificis auctoritatem aut proprii patriarchae minime relaxetur; ut in hoc quoque quatuor patriarchales sedes specialiter honorentur. (C. 29, X, De praebend., III, 5.)

31. Ad abolendam pessimam, quae in plerisque inolevit ecclesiis, corruptelam, firmiter prohibemus, ne canonicorum filii maxime spurii, canonici fiant in saecularibus ecclesiis, in quibus instituti sunt patres; ac si fuerit contra praesumptum, decernimus non valere; qui vero tales, ut dictum est, canonicare praesumpserint, a suis beneficiis suspendantur. (C. 16, X, De fil. presbyt., I, 17.)

32. Extirpandae consuetudinis vitium in quibusdam partibus inolevit, quod scilicet patroni ecclesiarum parochialium, et aliae quaedam personae, proventus ipsarum sibi penitus vindicantes, presbyteris earumdem servitio deputatis relinquunt adeo exiguam portionem, ut ex ea congrue nequeant sustentari. Nam ut pro certo didicimus, in quibusdam regionibus parochiales presbyteri pro sustentatione non obtinent nisi quartam quartae, id est, sextam decimam decimarum. Unde fit ut in his regionibus pene nullus inveniatur sacerdos parochialis, qui vel modicam habeat peritiam litterarum. Cum igitur os bovis alligari non debeat triturantis, sed qui altari servit, vivere debeat de altari; statuimus ut consuetudine qualibet episcopi vel patroni, seu cujuscumque alterius non obstante, portio presbyteris ipsis sufficiens assignetur. Qui vero parochialem habet ecclesiam, non per vicarium, sed per se ipsum illi deserviat, in ordine quem ipsius ecclesiae cura requirit, nisi forte praebendae vel dignitati parochialis ecclesia sit annexa; in quo casu concedimus ut is qui talem habet praebendam vel dignitatem, cum oporteat eum in majori ecclesia deservire, in ipsa parochiali ecclesia idoneum et perpetuum studeat habere vicarium canonice institutum, qui, ut praedictum est, congruentem habeat de ipsius ecclesiae proventibus portionem; alioquin illa se sciat hujus decreti auctoritate privatum, libere alii conferenda, qui velit et possit quod praedictum est adimplere. Illud autem penitus interdicimus, ne quis in fraudem de proventibus ecclesiae, quae curam proprii sacerdotis debet habere, pensionem alii quasi pro beneficio conferre praesumat. (C. 30, X, De praebend., III, 5.)

33. Procurationes quae visitationis ratione debentur episcopis, archidiaconis, vel quibuslibet aliis, etiam apostolicae sedis legatis vel nunciis, absque manifesta et necessaria causa nullatenus exigantur, nisi quando praesentialiter officium visitationis impendunt; et tunc evectionum et personarum mediocritatem observent in Lateranensi concilio definitam. Hoc adhibito moderamine circa legatos et nuncios apostolicae sedis, ut cum oportuerit eos apud aliquem locum moram facere necessariam, ne locus ille propter illos nimium aggravetur, procurationes recipiant moderatas ab aliis ecclesiis vel personis, quae non dum fuerunt de suis procurationibus aggravatae; ita quod numerus procurationum, numerum dierum quibus hujusmodi moram fecerint, non excedat; et cum aliqua non suffecerit per seipsam, duae vel plures conjungantur in unam. Porro visitationis officium exercentes non quaerant quae sua sunt, sed quae Jesu Christi, praedicationi et exhortationi, correctioni et reformationi vacando, ut fructum referant qui non perit. Qui autem contravenire praesumpserit, et quod acceperat reddat, et ecclesiae, quam taliter aggravavit, tantumdem rependat. (C. 23, X, De cens., III, 39.)

34. Quia praelati plerique, ut procurationem aut servitium aliquod impendant legato vel aliis, plus extorquent a subditis quam solvant, et in eorum damnis lucra sectantes, quaerunt praedam potius quam subsidium in subjectis; id de cetero fieri prohibemus. Quod si quis forte praesumpserit, et sic extorta restituat, et tantumdem cogatur pauperibus elargiri. Superior autem, cui super hoc fuerit querela deposita, si negligens fuerit in ejusmodi executione statuti, canonicae subjaceat ultioni. (C. 8, X, De immunit. eccl., III, 49.)

35. Ut debitus honor deferatur judicibus, et litigatoribus consulatur super laboribus et expensis, statuimus ut ubi quis coram idoneo judice conveniat adversarium, ille ante sententiam ad superiorem judicem absque rationabili causa non provocet, sed coram illo suam justitiam prosequatur, non obstante si dicat, quod ad superiorem judicem nuncium destinaverit, aut etiam litteras impetraverit ab eodem, priusquam delegato fuerint assignatae. Cum autem ex rationabili causa putaverit appellandum, coram eodem judice causa probabili appellationis exposita, tali videlicet, quae si foret probata, deberet legitima reputari, superior de appellatione cognoscat; et si minus eum rationabiliter appellasse cognoverit, illum ad inferiorem remittat, et in expensis alteri parti condemnet. Alioquin ipse procedat salvis constitutionibus de majoribus causis ad sedem apostolicam perferendis. (C. 59, X, De appell., II, 28.)

36. Cum cessante causa cesset effectus, statuimus ut sive judex ordinarius sive delegatus, aliquid comminando vel interloquendo protulerit, quo executionis mandato, alter litigantium gravaretur, et sano usus consilio ab hujusmodi comminationis vel interlocutionis effectu destiterit, libere in causae cognitione procedat, non obstante, si a tali comminatione vel interlocutione fuerit appellatum, dummodo non sit ex alia legitima causa suspectus, ne processus negotii frivolis occasionibus retardetur. (C. 60, X, De appell., II, 28.)

37. Nonnulli gratia sedis apostolicae abutentes, litteras ejus ad remotos judices impetrare nituntur, ut reus fatigatus laboribus et expensis, liti cedere, vel importunitatem actoris redimere compellatur. Cum autem per judicium injuriis aditus patere non debeat, quas juris observantia interdicit; statuimus, ne quis ultra duas dietas extra suam dioecesim per litteras apostolicas ad judicium trahi possit, nisi de assensu partium fuerint impetratae, vel expressam de hac constitutione fecerint mentionem. Sunt et alii qui se ad novum genus mercimonii convertentes, ut vel sopitas possint suscitare querelas, aut novas immittere quaestiones, fingunt causas, super quibus a sede apostolica litteras impetrant absque domini mandato, quas vel reo, ne propter eas laborum vel expensarum dispendio molestetur, aut actori, ut per ipsas adversarium indebita vexatione fatiget, venales exponunt. Cum autem lites restringendae sint potius quam laxandae, hac generali constitutione sancimus, ut si quis super aliqua quaestione de cetero sine mandato speciali domini, litteras apostolicas impetrare praesumpserit, et litterae non valeant, et ipse tamquam falsarius puniatur, nisi forte de illis personis extiterit, a quibus non debet exigi de jure mandatum. (C. 28, X, De rescript., I, 3.)

38. Quoniam contra falsam assertionem iniqui judicis innocens litigator quandoque non potest veram negationem probare, cum negantis factum per rerum naturam nulla sit directa probatio; ne falsitas veritati praejudicet, aut iniquitas praevaleat aequitati, statuimus, ut tam in ordinario judicio quam extraordinario, judex semper adhibeat, aut publicam, si potest habere, personam, aut duos viros idoneos, qui fideliter universa judicii acta conscribant, videlicet citationes et dilationes, recusationes et exceptiones, petitiones et responsiones, interrogationes et confessiones, testium depositiones et instrumentorum productiones, interlocutiones, appellationes, renunciationes, conclusiones et cetera quae occurrunt, competenti ordine conscribenda, designando loca, tempora et personas; et omnia sic conscripta partibus tribuantur; ita quod originalia penes scriptores remaneant; ut, si super processu judicis fuerit suborta contentio, per haec possit veritas declarari. Hoc adhibito moderamine, quatenus sic honestis et discretis deferatur judicibus, quod per improvidos et iniquos innocentum justitia non laedatur. Judex autem qui constitutionem istam neglexerit observare, si propter ejus negligentiam

aliquid difficultatis emerserit, per superiorem judicem animadversione debita castigetur; nec pro ipsius praesumatur processu, nisi quatenus in causa legitimis constiterit documentis. (C. 11, X, De probat., II, 19.)

39. Saepe contingit quod spoliatus injuste, per spoliatorem in alium re translata, dum adversus possessorem non subvenitur per restitutionis beneficium spoliato, commodo possessionis amisso propter difficultatem probationis, jus proprietatis amittit effectum. Unde non obstante civilis juris rigore sancimus, ut si quis de cetero scienter rem talem acceperit, cum spoliatori quasi succedat in vitium, eo quod non multum intersit, praesertim quoad periculum animae detinere injuste ac invadere alienum, contra possessorem hujusmodi spoliato per restitutionis beneficium succurratur. (C. 18, X, De restit. spoliat., II, 13.)

40. Contingit interdum quod cum actori ob constumaciam partis adversae adjudicatur causa rei servandae possessio, propter rei potentiam sive dolum, actor infra annum rem custodiendam nancisci non potest, vel nactam amittit; et sic cum secundum assertionem multorum verus non efficeretur post lapsum anni possessor, reportat commodum de malitia sua reus. Ne igitur contumax melioris, quam obediens, conditionis existat, de canonica aequitate sancimus, ut in casu praemisso actor verus constituatur elapso anno possessor. Ad haec generaliter prohibemus, ne super rebus spiritualibus compromittatur in laicum, quia non decet ut laicus in talibus arbitretur. (C. 8, X, De arbitris, I, 43.)

41. Quoniam omne quod non est ex fide paccatum est, synodali judicio definimus, ut nulla valeat absque bona fide praescriptio, tam canonica quam civilis; cum sit generaliter omni constitutioni atque consuetudini derogandum, quae absque mortali non potest observari peccato. Unde oportet, ut qui praescribit, in nulla temporis parte rei habeat conscientiam alienae. (C. 20, X, De praescript., II, 26.)

42. Sicut volumus ut jura clericorum non usurpent laici, ita velle debemus, ne clerici jura sibi vindicent laicorum. Quocirca universis clericis interdicimus, ne quis praetextu ecclesiasticae libertatis suam de cetero jurisdictionem extendat in praejudicium justitiae saecularis, sed contentus existat constitutionibus scriptis, et consuetudinibus hactenus approbatis; ut quae sunt Caesaris, reddantur Caesari, et quae sunt Dei, Deo recta distributione reddantur.

43. Nimis de jure divino quidam laici usurpare conantur, cum viros ecclesiasticos nihil temporale detinentes ab eis, ad praestandum sibi fidelitatis juramentum compellunt. Quia vero secundum apostolum, *Servus Domino stat aut cadit*, sacri auctoritate concilii prohibemus, ne tales clerici personis saecularibus praestare cogantur hujusmodi juramentum. (C. 30, X, De jurejur., II, 24.)

44. Cum laicis, quamvis religiosis, disponendi de rebus ecclesiasticis nulla sit attributa potestas, quos subsequendi manet necessitas, non auctoritas imperandi; dolemus sic in quibusdam ex illis refrigescere caritatem, quod immunitatem ecclesiasticae libertatis, quam nedum sancti patres, sed etiam principes saeculares multis privilegiis munierunt, non formidant suis constitutionibus, vel potium confictionibus impugnare, non solum de feudorum alienatione, ac aliarum possessionum ecclesiasticarum, et usurpatione jurisdictionum, sed etiam de mortuariis, necnon et aliis quae spirituali juri videntur annexa, illicite praesumendo. Volentes igitur super his ecclesiarum indemnitati consulere, ac tantis gravaminibus providere; constitutiones hujusmodi et vindicationes feudorum, seu

aliorum bonorum ecclesiasticorum sine legitimo ecclesiasticarum personarum assensu praesumptas occasione constitutionis laicae potestatis, cum non constitutio sed destitutio vel destructio dici possit, necnon usurpatio jurisdictionum, sacri approbatione concilii decernimus non tenere, praesumptoribus per censuram ecclesiasticam compescendis. (C. 12, X, De rebus eccles. alienand., III, 13.)

45. In quibusdam provinciis ecclesiarum patroni, seu vicedomini, et advocati, se in tantam insolentiam erexerunt, quod non solum, cum vacantibus debet ecclesiis de pastoribus idoneis provideri, difficultates ingerunt, et malitias; verum etiam de possessionibus et aliis bonis ecclesiasticis pro sua voluntate ordinare praesumunt; et, quod horrendum est dicere, in necem praelatorum prorumpere non formidant. Cum igitur quod ad defensionis subsidium est inventum, ad depressionis dispendium non debeat detorqueri; prohibemus expresse, ne patroni, vel advocati, seu vicedomini, super praemissis de cetero plus usurpent, quam reperiatur in jure permissum; et, si contra praesumpserint, districtissime per severitatem canonicam compescantur. Sacri nihilominus concilii approbatione statuimus, quatenus si patroni, vel advocati, aut feudatarii, seu vicedomini, seu alii beneficiati, alicujus ecclesiae rectorem, vel clericum alium ipsius ecclesiae, per se vel per alios occidere, vel mutilare ausu nefando praesumpserint, patroni jus patronatus, advocati advocatiam, feudatarii feudum, vicedomini vicedominatum, beneficiati beneficium prorsus amittant. Et ne minus vindictae quam excessus memoria prorogetur; non solum de praemissis nil perveniat ad haeredes, sed etiam usque ad quartam generationem posteritates talium in clericorum collegium nullatenus admittantur, nec in regularibus domibus alicujus praelationis assequantur honorem, nisi cum eis fuerit misericorditer dispensatum. (C. 12, X, De poenis, V, 37.)

46. Adversus consules ac rectores civitatum, et alios qui ecclesias et viros ecclesiasticos talliis seu collectis et exactionibus aliis aggravare nituntur, volens immunitati ecclesiasticae Lateranense concilium providere, praesumptionem hujusmodi sub anathematis districtione prohibuit; transgressores et fautores eorum excommunicationi praecipiens subjacere, donec satisfactionem impendant competentem. Verum si quando forsan episcopus simul cum clericis tantam necessitatem vel utilitatem prospexerint, ut absque ulla coatione, ad relevandas utilitates vel necessitates communes, ubi laicorum non suppetunt facultates, subsidia per ecclesias duxerint conferenda; praedicti laici humiliter et devote recipiant cum actionibus gratiarum. Propter impudentiam tamen quorumdam Romanum prius consulant pontificem, cujus interest communibus utilitatibus providere. Quoniam vero nec sic quorumdam malitia contra Dei ecclesiam conquievit, adjicimus ut constitutiones et sententiae quae ab excommunicatis hujusmodi, vel de ipsorum mandato, fuerint promulgatae, inanes et irritae habeantur, nullo unquam tempore valiturae. Ceterum quia fraus et dolus alicui patrocinari non debent, nullus vano decipiatur errore, ut infra tempus regiminis sustineat anathema, quasi post illud non sit ad satisfactionem debitam compellendus. Nam et ipsum qui satisfacere recusaverit, et successorem ipsius, si non satisfecerit infra mensem, manere decernimus ecclesiastica censura conclusum, donec satisfecerit competenter; cum succedat in onere, qui substituitur in honore. (C. 7, X, De immunit. eccles., III, 49.)

47. Sacro approbante concilio prohibemus, ne quis in aliquem excommunicationis sententiam, nisi competenti commonitione praemissa, et praesentibus idoneis personis, per quas, si necesse fuerit, possit probari monitio, promulgare praesumat. Quod si quis contra praesumpserit, etiam si justa fuerit excommunicationis sententia, ingressum ecclesiae per mensem unum sibi noverit interdictum; alia nihilominus poena mulctandus, si

visum fuerit expedire. Caveat etiam diligenter, ne ad excommunicationem cujusquam absque manifesta et rationabili causa procedat; ad quam si forte taliter processerit, et requisitus humiliter, processum hujusmodi non curaverit absque gravamine revocare; gravatus apud superiorem deponat de injusta excommunicatione querelam; quod si absque periculo morae potest, ad excommunicatoreum illum cum suo mandato remittat, infra competentem terminum absolvendum; alioquin ipse per se, vel per alium, prout viderit expedire, sufficienti cautione recepta, munus ei absolutionis impendat. Cumque adversus excommunicatorem de injusta excommunicatione constiterit, excommunicator condemnetur excommunicato ad interesse; alias nihilominus, si culpae qualitas postulaverit, superioris arbitrio puniendus; cum non levis sit culpa tantam infligere poenam insonti, nisi forsan erraverit ex causa probabili, maxime si laudabilis opinionis existat. Verum si contra excommunicationis sententiam nihil rationabile fuerit a conquerente probatum; idem et super injusta conquestionis molestia per poenam ad interesse, vel alias secundum superioris arbitrium, condemnetur, nisi forsan et ipsum probabilis error excuset; et super eo, pro quo justa fuerit excommunicatione ligatus, per cautionem receptam satisfacere compellatur, vel in pristinam reducatur sententiam, usque ad satisfactionem condignam inviolabiliter observandam. Si vero judex suum recognoscens errorem, paratus sit talem revocare sententiam, et is, pro quo lata fuerit, ne absque satisfactione revocet illam, appellet; appellationi non deferat in hac parte, nisi talis sit error, de quo merito possit dubitari; et tunc sufficienti cautione recepta quod coram eo, ad quem extitit appellatum, vel delegato ab ipso, juri parebit, excommunicatum absolvat, sicque poenae praescriptae minime subjacebit; cavens omnino, ne voluntate perversa in alterius praejudicium mentiatur errorem, si districtionis canonicae vult effugere ultionem. (C.48, X, De sentent. excomm., V, 39.)

48. Cum speciali sit prohibitione provisum, ne quis in aliquem excommunicationis sententiam, nisi competenti commonitione praemissa, promulgare praesumat; volentes etiam providere, ne forte commonitus, frustratoriae recusationis vel appellationis obtentu, monentis declinare possit examen; statuimus quod si allegaverit, se judicem habere suspectum, coram eodem causam justae suspicionis assignet. Et ipse cum adversario, vel si forte adversarium non habeat, cum judice arbitros communiter eligat, aut si forte communiter convenire non possunt, eligant absque malitia, ipse unum et ille alium, qui de suspicionis causa cognoscant; et si nequiverint in unam concordare sententiam, advocent tertium, ut quod duo ex ipsis decreverint, robur obtineat firmitatis. Sciant quoque se ad id fideliter exequendum, ex injuncto a nobis in virtute obedientiae, sub attestatione divini judicii districto praecepto, teneri. Causa vero suspicionis legitima coram ipsis infra competentem terminum non probata, sua jurisdictione judex utatur. At ipsa probata legitime, de recusatoris assensu personae idoneae committat negotium recusatus, vel ad superiorem transmittat, ut in eo ipse procedat, secundum quod fuerit procedendum. Porro commonito ad appellationem convolante, si ejus excessus evidentia rei, vel ipsius confessione, aut alio modo legitime fuerit manifestatus, cum appellationis remedium non sit ad defensionem iniquitatis, sed in praesidium innocentiae institutum, non est provocationi hujusmodi deferendum. Excessu quoque dubio existente, ne frivolae appellationis diffugio appellans judicis processum impediat, coram eodem probabilem causam appellationis exponat, talem videlicet, quae si foret probata, deberet legitima reputari. Et tunc si habuerit adversarium, infra terminum secundum locorum distantiam et temporis qualitatem et naturam negotii, ab eodem judice moderandum, appellationis causam prosequatur; quam si prosequi non curaverit, ex tunc ipse judex, non obstante appellatione, procedat. Nullo autem adversario comparente, cum ex suo judex procedat officio, appellationis causa coram superiore probata, superior suae ju-

risdictionis officium exequatur. Sed si appellans in ejus probatione defecerit, ad eum a quo ipsum malitiose appellasse constiterit, remittatur. Ceterum has duas constitutiones praemissas nolumus ad regulares extendi, qui suas habent observantias speciales. (C.61, X, De appell., II, 28.)

49. Sub interminatione divini judicii penitus interdicimus, ut causa cupiditatis nullus audeat excommunicationis vinculo aliquem innodare, vel absolvere innodatum; in illis maxime regionibus, in quibus ex consuetudine, cum excommunicatus absolvitur, pecuniaria poena mulctatur; statuentes ut cum excommunicationis sententiam injustam fuisse constiterit, excommunicator ad restituendam pecuniam sic extortam per censuram ecclesiasticam compellatur; et nisi probabili fuerit errore deceptus, tantumdem injuriam passo persolvat; et, si forte solvendo non fuerit, animadversione alia castigetur.

50. Non debet reprehensibile judicari, si secundum varietatem temporum statuta quandoque varientur humana, praesertim cum urgens necessitas, vel evidens utilitas id exposcit, quoniam ipse Deus ex iis, quae in Veteri Testamento statuerat, nonnulla mutavit in Novo. Cum igitur prohibitiones de conjugio in secundo et tertio affinitatis genere minime contrahendo, et de sobole suscepta ex secundis nuptiis cognationi viri non copulanda prioris, et difficultatem frequenter inducant, et aliquando periculum pariant animarum; ut cessante prohibitione cesset effectus, constitutiones super hoc editas sacri approbatione concilii revocantes, praesenti constitutione decernimus, ut sic contrahentes de cetero libere copulentur. Prohibitio quoque copulae conjugalis quartum consanguinitatis et affinitatis gradum de cetero non excedat; quoniam in ulterioribus gradibus jam non potest absque gravi dispendio hujusmodi prohibitio generaliter observari. Quaternarius enim numerus bene congruit prohibitioni conjugii corporalis, de quo dicit apostolus, quod *vir non habet potestatem sui corporis, sed mulier; neque mulier habet potestatem sui corporis, sed vir;* [16] quia quatuor sunt humores in corpore, quod constat ex quatuor elementis. Cum ergo jam usque ad quartum gradum prohibitio conjugalis copulae sit restricta, eam ita esse volumus perpetuam, non obstantibus constitutionibus super hoc dudum editis, vel ab aliis vel a nobis, ut si qui contra prohibitionem hujusmodi praesumpserint copulari, nulla longinquitate defendantur annorum; cum diuturnitas temporum non minuat peccatum, sed augeat; tantoque graviora sint crimina, quanto diutius infelicem detinent animam alligatam. (C.8, X, De consangu. et affinit., IV, 14.)

51. Cum inhibitio copulae conjugalis sit in tribus ultimis gradibus revocata, eam in aliis volumus districte observari. Unde praedecessorum nostrorum inhaerendo vestigiis, clandestina conjugia penitus inhibemus; prohibentes etiam, ne quis sacerdos talibus interesse praesumat. Quare specialem quorumdam locorum consuetudinem ad alia generaliter prorogando, statuimus, ut cum matrimonia fuerint contrahenda, in ecclesiis per presbyteros publice proponantur, competenti termino praefinito, ut infra illum, qui voluerit et valuerit, legitimum impedimentum opponat. Et ipsi presbyteri nihilominus investigent, utrum aliquod impedimentum obsistat. Cum autem probabilis apparuerit conjectura contra copulam contrahendam, contractus interdicatur expresse, donec quid fieri debeat super eo, manifestis constiterit documentis. Si quis vero hujusmodi clandestina vel interdicta conjugia inire praesumpserit in gradu prohibito, etiam ignoranter, soboles de tali conjunctione suscepta, prorsus illegitima censeatur, de parentum ignorantia nullum habitura subsidium; cum illi taliter contrahendo, non expertes scien-

[16] Vide I Cor. 7:4.

tiae, vel saltem affectatores ignorantiae videantur. Pari modo illegitima proles censeatur, si ambo parentes, impedimentum scientes legitimum, praeter omne interdictum in conspectu ecclesiae contrahere praesumpserint. Sane parochialis sacerdos, qui tales conjunctiones prohibere contempserit, aut quilibet etiam regularis, qui eis praesumpserit interesse, per triennium ab officio suspendatur, gravius puniendus, si culpae qualitas postulaverit. Sed et iis, qui taliter copulari praesumpserint, etiam in gradu concesso, condigna poenitentia injungatur. Si quis autem ad impediendam legitimam copulam malitiose impedimentum objecerit, ecclesiasticam non effugiet ultionem. (C.3, X, De clandest. despons., IV, 3.)

52. Licet ex quadam necessitate praeter communem formam alias fuerit institutum, ut in consanguinitatis et affinitatis gradibus computandis valeret testimonium de auditu, cum propter brevem hominum vitam testes de visu deponere non valerent usque ad gradum septimum computando; quia tamen pluribus exemplis et certis experimentis didicimus, ex hoc multa pericula contra legitima conjugia provenisse, statuimus, ne super hoc recipiantur testes de cetero de auditu, cum jam quartum gradum prohibitio non excedat; nisi personae graves extiterint, quibus fides merito sit adhibenda, et ante motam litem testificata didicerint ab antiquioribus quidem suis, non utique uno, cum non sufficeret ille, si viveret, sed duobus ad minus; nec ab infamibus et suspectis, sed a fide dignis, et omni exceptione majoribus; cum satis videretur absurdum illos admitti, quorum repellerentur auctores. Nec tamen si unus a pluribus, vel infamis ab hominibus bonae famae acceperint, quod testentur, tamquam plures et idonei testes debent admitti; cum etiam secundum ordinem solitum judiciorum non sufficiat unius testis assertio, etiamsi praesidiali dignitate praefulgeat, et actus legitimi sint infamibus interdicti. Testes autem hujusmodi proprio juramento firmantes, quod ad ferendum in causa ipsa testimonium, odio, vel timore, vel amore, vel commodo non procedant, personas expressis nominibus, vel demonstratione, sive circumlocutione sufficienti designent, et ab utroque latere clara computatione gradus singulos distinguant; et in suo nihilominus juramento concludant, se accepisse a suis majoribus quod deponunt, et credere ita esse. Sed nec tales sufficiant, nisi jurati deponant, se vidisse personas saltem in uno praedictorum graduum constitutas pro consanguineis se habere. Tolerabilius est enim aliquos contra statuta hominum copulatos dimittere, quam conjunctos legitime contra statuta Domini separare. (C.47, X, De test. et attest., II, 20.)

53. In aliquibus regionibus quaedam permixtae sunt gentes, quae secundum suos ritus decimas de more non solvunt, quamvis censeantur nomine christiano. His nonnulli domini praediorum ea tribuunt excolenda, ut decimis defraudantes ecclesias, majores inde reditus assequantur. Volentes igitur super his ecclesiarum indemnitatibus providere, statuimus, ut ipsi domini talibus personis, et taliter sua praedia excolenda committant, quod absque contradictione decimas ecclesiis cum integritate persolvant, et ad id, si necesse fuerit, per censuram ecclesiasticam compellantur. Illae quippe decimae necessario sunt solvendae, quae debentur ex lege divina, vel loci consuetudine approbata. (C.32, X, De decimis, III, 30.)

54. Cum non sit in homine quod semen serenti respondeat, quoniam juxta verbum apostoli: *Neque qui plantat est aliquid, neque qui rigat, sed qui incrementum dat Deus;*[17] ipso quidem de mortificato semine plurimum fructum afferente; nimis avare in decimis quidam defraudare nituntur, census et tributa, quae interdum indecimata praetereuntur, de frugibus et primitiis educentes. Cum autem in signum universalis dominii,

[17] Vide I Cor. 3:7.

quasi quodam titulo speciali sibi Dominus decimas reservaverit; nos et ecclesiarum dispendiis, et animarum periculis obviare volentes, statuimus, ut in praerogativa dominii generalis exactionem tributorum et censuum praecedat solutio decimarum; vel saltem hi, ad quos census et tributa indecimata pervenerint, quoniam res cum onere suo transit, ea per censuram ecclesiasticam decimare cogantur ecclesiis, quibus jure debentur. (C.33, X, De decimis, III, 30.)

55. Nuper abbates Cisterciensis ordinis in generali capitulo congregati ad commonitionem nostram provide statuerunt, ne de cetero fratres ipsius ordinis emant possessiones, de quibus decimae debentur ecclesiis, nisi forte pro monasteriis noviter fundandis. Et si tales possessiones eis fuerint pia fidelium devotione collatae, aut emptae pro monasteriis de novo fundandis, committant excolendas aliis, a quibus ecclesiis decimae persolvantur, ne occasione privilegiorum suorum ecclesiae ulterius praegraventur. Decernimus ergo, ut de alienis terris, et amodo acquirendis, etiamsi eas propriis manibus aut sumptibus deinceps excoluerint, decimas persolvant ecclesiis, quibus ratione praediorum antea solvebantur, nisi cum ipsis ecclesiis aliter duxerint componendum. Nos ergo statutum hujusmodi gratum et ratum habentes, hoc ipsum ad alios regulares, qui gaudent similibus privilegiis, extendi volumus, et mandamus ut ecclesiarum praelati proniores et efficaciores existant ad exhibendum eis de suis malefactoribus justitiae complementum, eorumque privilegia diligentius et perfectius studeant observare. (C.34, X, De decimis, III, 30.)

56. Plerique, sicut accepimus, regulares et clerici saeculares, interdum cum vel domos locant, vel feuda concedunt, in praejudicium parochialium ecclesiarum pactum adjiciunt ut conductores et feudatarii decimas eis solvant, et apud eosdem eligant sepulturam. Cum autem id de avaritiae radice procedat, pactum hujusmodi penitus reprobamus; statuentes, ut quidquid fuerit occasione hujusmodi pacti perceptum, ecclesiae parochiali reddatur. (C.7, X, De pactis, I, 35.)

57. Ut privilegia, quae quibusdam religiosis personis Romana concessit ecclesia, permaneant inconvulsa, quaedam in eis declaranda duximus, ne minus sane intellecta pertrahant ad abusum, propter quem merito possint revocari; quia privilegia meretur amittere, qui permissa sibi abutitur potestate. Sane quibusdam regularibus sedes apostolica indulsit, ut iis, qui eorum fraternitatem assumpserint, si forsan ecclesiae, ad quas pertinent, a divinis fuerint officiis interdictae, ipsosque mori contingat, sepultura ecclesiastica non negetur, nisi excommunicati, vel nominatim fuerint interdicti; suosque confratres, quos ecclesiarum praelati apud ecclesias suas non permiserint sepeliri, nisi excommunicati vel interdicti fuerint nominatim, ipsi ad ecclesias suas deferant tumulandos. Hoc autem de illis confratribus intelligimus, qui vel adhuc manentes in saeculo, eorum ordini sunt oblati, mutato habitu saeculari, vel qui eis inter vivos sua bona dederunt, retento sibi, quamdiu in saeculo vixerunt, usufructu; qui tamen sepeliantur apud ipsorum regularium vel aliorum non interdictas ecclesias, in quibus elegerint sepulturam; ne si de quibuslibet ipsorum fraternitatem assumentibus fuerit intellectum pro duobus aut tribus denariis annuatim sibi collatis dissolvatur pariter et vilescat ecclesiastica disciplina. Certam tamen et ipsi remissionem obtineant ab apostolica sibi sede concessam. Illud etiam, quod hujusmodi regularibus est indultum, ut si qui fratrum suorum, qui ab eis missi fuerint ad recipiendas fraternitates, sive collectas, in quamlibet civitatem, castellum, vel vicum advenerint, si forte locus ille a divinis sit officiis interdictus, in eorum jucundo adventu semel in anno aperiantur ecclesiae, ut exclusis excommunicatis divina ibi officia celebrentur; sic intelligi volumus, quod in eadem

civitate, aut castro, vel villa, una tantum ecclesia ejusdem ordinis fratribus, ut dictum est, semel aperiatur in anno; quia licet pluraliter dictum sit, quod in eorum jucundo adventu aperiantur ecclesiae, non tamen ad ecclesias ejusdem loci divisim, sed praedictorum locorum conjunctim, sano referendum est intellectu; ne si hoc modo singulas ejusdem loci ecclesias visitarent, nimium vilipendi contingeret sententiam interdicti. Qui vero contra declarationes praescriptas quidquam sibi praesumpserint usurpare, gravi subjaceant ultioni. (C. 24, X, De privileg., V, 33.

58. Quod nonnullis est religiosis indultum, in favorem pontificalis officii ad episcopos extendentes, concedimus, ut, cum commune terrae fuerit interdictum, excommunicatis et interdictis exclusis, possint quandoque januis clausis, suppressa voce, non pulsatis campanis, celebrare officia divina, nisi hoc ipsum eis expresse fuerit interdictum. Verum hoc illis concedimus, qui causam aliquam non praestiterint interdicto, nec quidquam doli vel fraudis ingesserint, tale compendium ad iniquum dispendium pertrahentes. (C. 25, X, De privileg., V, 33.)

59. Quod quibusdam religiosis a sede apostolica est prohibitum, volumus et mandamus ad universos extendi; ne quis videlicet religiosus absque abbatis et majoris partis sui capituli licentia, pro aliquo fidejubeat, vel ab alio pecuniam mutuo accipiat ultra summam communi providentia constitutam; alioquin non teneatur conventus pro his aliquatenus respondere, nisi forte in ultilitatem domus ipsius manifeste constiterit redundasse; et qui contra statutum illud venire praesumpserit, graviori disciplinae subdatur. (C. 4, X, De fidejuss., III, 22.)

60. Accedentibus ad nos de diversis mundi partibus episcoporum querelis, intelleximus graves et grandes quorumdam abbatum excessus, qui suis finibus non contenti, manus ad ea, quae sunt episcopalis dignitatis extendunt, de causis matrimonialibus cognoscendo, injungendo publicas poenitentias, concedendo etiam indulgentiarum litteras, et similia praesumendo, unde contingit interdum, quod vilescat episcopalis auctoritas apud multos. Volentes igitur in iis et episcoporum dignitati et abbatum providere saluti, praesenti decreto firmiter prohibemus, ne quis abbatum ad talia se praesumat extendere, si proprium voluerit periculum evitare; nisi forte quisquam eorum speciali concessione vel alia legitima causa, super hujusmodi valeat se tueri. (C. 12, X, De excess. praelat., V, 31.)

61. In Lateranensi concilio noscitur fuisse prohibitum, ne quilibet regulares ecclesias, seu decimas, sine consensu episcoporum de manu praesumant recipere laicali; nec excommunicatos vel nominatim interdictos admittant aliquatenus ad divina. Nos autem id fortius inhibentes, transgressores condigna curabimus animadversione puniri, statuentes nihilominus, quatenus in ecclesiis, quae ad ipsos pleno jure non pertinent, juxta ejusdem statuta concilii, episcopis instituendos presbyteros repraesentent, ut illis de plebis cura respondeant; ipsis vero pro rebus temporalibus rationem exhibeant competentem. Institutos vero removere non audeant episcopis inconsultis. Sane adjicimus, ut illos repraesentare procurent, quos vel conversatio reddit notos, vel commendat probabile testimonium praelatorum. (C. 31, X, De praebend., III, 5.)

62. Cum ex eo quod quidam sanctorum reliquias exponunt venales, et eas passim ostendunt, christianae religioni sit detractum saepius; ne detrahatur inposterum, praesenti decreto statuimus, ut antiquae reliquiae amodo extra capsam non ostendantur, nec exponantur venales. Inventas autem de novo nemo publice venerari praesumat, nisi

prius auctoritate Romani pontificis fuerint approbatae. Praelati vero de cetero non permittant illos, qui ad eorum ecclesias causa venerationis accedunt, vanis figmentis, aut falsis decipi documentis, sicut et in plerisque locis occasione quaestus fieri consuevit. Eleemosynarum quoque quaestores, quorum quidam se alios mentiendo abusiones nonnullas in sua praedicatione proponunt, admitti, nisi apostolicas vel dioecesani episcopi litteras veras exhibeant, prohibemus. Et tunc praeter id, quod in ipsis continebitur litteris, nihil populo proponere permittantur. Formam vero, quam communiter talibus apostolica sedes indulget, duximus exprimendam; ut secundum eam, dioecesani episcopi suas litteras moderentur. Ea siquidem talis est:

Forma Litterarum Praedicatorum

"Quoniam, ut ait apostolus, omnes stabimus ante tribunal Christi, recepturi prout in corpore gessimus, sive bonum sive malum fuerit; oportet nos diem messionis extremae misericordiae operibus praevenire; ac aeternorum intuitu seminare in terris, quod reddente Domino cum multiplicato fructu colligere debeamus in caelis; firmam spem, fiduciamque tenentes, quoniam *qui parce seminat, parce et metet; et qui seminat in benedictionibus de benedictionibus et metet in vitam aeternam.* Cum igitur ad sustentationem fratrum et egenorum ad tale confluentium hospitale propriae non suppetant facultates, universitatem vestram monemus, et exhortamur in Domino, atque in remissionem vobis injungimus peccatorum; quatenus de bonis a Deo vobis collatis pias eleemosynas et grata eis caritatis subsidia erogetis; ut per subventionem vestram ipsorum inopiae consulatur, et vos per haec et per alia bona, quae Domino inspirante feceritis, ad aeterna possitis gaudia pervenire."

Qui autem ad quaerendas eleemosynas destinantur, modesti sint et discreti, nec in tabernis aut locis aliis incongruis hospitentur, nec inutiles faciant, aut sumptuosas expensas; caventes omnino, ne falsae religionis habitum gestent.

Ad haec quia per indiscretas et superfluas indulgentias, quas quidam ecclesiarum praelati facere non verentur, et claves ecclesiae contemnuntur, et poenitentialis satisfactio enervatur; decernimus, ut cum dedicatur basilica, non extendatur indulgentia ultra annum, sive ab uno solo, sive a pluribus episcopis dedicetur; ac deinde in anniversario dedicationis tempore quadraginta dies de injunctis poenitentiis indulta remissio non excedat. Hunc quoque dierum numerum indulgentiarum litteras praecipimus moderari, quae pro quibuslibet causis aliquoties conceduntur; cum Romanus pontifex, qui plenitudinem obtinet potestatis hoc in talibus moderamen consueverit observare. (C. 2, X, De reliq. et venerat. sanct., III, 45 et c. 14, X, De poenit. et remiss., V, 38.)

63. Sicut pro certo didicimus, in plerisque locis, et a plurimis personis quasi columbas in templo vendentibus, fiunt exactiones et extorsiones turpes et pravae pro consecrationibus episcoporum, benedictionibus abbatum, et ordinibus clericorum, estque taxatum quantum sit isti vel illi, quantumve alteri vel alii persolvendum; et ad cumulum damnationis majoris, quidam turpitudinem et pravitatem hujusmodi nituntur defendere per consuetudinem longo tempore observatam. Tantum igitur abolere volentes abusum, consuetudinem hujusmodi, quae magis dicenda est corruptela, penitus reprobamus; firmiter statuentes, ut pro iis sive conferendis, sive collatis, nemo aliquid quocumque pretextu exigere ac extorquere praesumat. Alioquin et qui receperit et qui dederit hujusmodi pretium omnino damnatum, cum Giezi et Simone condemnetur. (C. 39, X, De simonia, V, 3.)

64. Quoniam simoniaca labes adeo plerasque moniales infecit, ut vix aliquas sine pretio recipiant in sorores, paupertatis praetextu volentes hujusmodi vitium palliare; ne id de cetero fiat, penitus prohibemus; statuentes, ut quaecumque de cetero talem pravitatem commiserit, tam recipiens quam recepta, sive, sit subdita sive praelata, sine spe restitutionis de suo monasterio expellatur in locum arctioris regulae ad agendam perpetuam poenitentiam retrudenda. De his autem, quae ante hoc synodale statutum taliter sunt receptae, ita duximus providendum, ut remotae de monasteriis, quae perperam sunt ingressae, in aliis locis ejusdem ordinis collocentur. Quod si propter nimiam multitudinem alibi forte nequiverint commode collocari, ne forte damnabiliter in saeculo evagentur, recipiantur in eodem monasterio dispensative de novo, mutatis prioribus locis, et inferioribus assignatis. Hoc etiam circa monachos et alios regulares decernimus observandum. Verum ne per simplicitatem vel ignorantiam se valeant excusare, praecipimus ut dioecesani episcopi singulis annis hoc faciant per suas dioeceses publicari. (C.40, X, De simonia, V, 3.)

65. Audivimus de quibusdam episcopis, quod decendentibus ecclesiarum rectoribus, ipsas interdicto subjiciunt, nec patiuntur aliquos in eisdem institui, donec ipsis certa summa pecuniae persolvatur. Praeterea cum miles aut clericus domum religionis ingreditur, vel apud religiosos elegit sepulturam, etiamsi nihil loco religioso reliquerit, difficultates ingerunt et malitias, donec aliquid muneris manus contingat eorum. Cum igitur non solum a malo, sed etiam ab omni specie mali sit secundum apostolum abstinendum, exactiones hujusmodi penitus inhibemus. Quod si quis transgressor extiterit, exacta duplicata restituat, in utilitates locorum, in quorum fuerint soluta dispendium, fideliter convertenda. (C.41, X, De simonia, V, 3.)

66. Ad apostolicam audientiam frequenti relatione pervenit, quod quidam clerici pro exequiis mortuorum, et benedictionibus nubentium, et similibus, pecuniam exigunt et extorquent; et, si forte cupiditati eorum non fuerit satisfactum, impedimenta fictitia fraudulenter opponunt. E contra vero quidam laici laudabilem consuetudinem erga sanctam ecclesiam pia devotione fidelium introductam, ex fermento haereticae pravitatis nituntur infringere sub praetextu canonicae pietatis. Quapropter et pravas exactiones super his fieri prohibemus, et pias consuetudines praecipimus observari; statuentes, ut libere conferantur ecclesiastica sacramenta, sed per episcopum loci veritate cognita compescantur, qui malitiose nituntur laudabilem consuetudinem immutare. (C.42, X, De simonia, V, 3.)

67. Quanto amplius christiana religio ab exactione compescitur usurarum, tanto gravius super his Judaeorum perfidia insolescit, ita quod brevi tempore christianorum exhauriunt facultates. Volentes igitur in hac parte prospicere christianis, ne a Judaeis immaniter aggraventur, synodali decreto statuimus, ut si de cetero quocumque praetextu Judaei a christianis graves et immoderatas usuras extorserint, christianorum eis participium subtrahatur, donec de immoderato gravamine satisfecerint competenter. Christiani quoque, si opus fuerit, per censuram ecclesiasticam, appellatione postposita, compellantur ab eorum commerciis abstinere. Principibus autem injungimus, ut propter hoc non sint christianis infesti, sed potius a tanto gravamine Judaeos studeant cohibere. Ac eadem poena Judaeos decernimus compellendos ad satisfaciendum ecclesiis pro decimis et oblationibus debitis, quas a christianis de domibus et possessionibus aliis percipere consueverant, antequam ad Judaeos quocumque titulo devenissent; ut sic ecclesiae conserventur indemnes. (C.18, X, De usuris, V, 19.)

68. In nonnullis provinciis a christianis Judaeos seu Saracenos habitus distinguit diversitas; sed in quibusdam sic quaedam inolevit confusio, ut nulla differentia discernantur. Unde contingit interdum, quod per errorem christiani Judaeorum seu Saracenorum, et Judaei seu Saraceni christianorum mulieribus commisceantur. Ne igitur tam damnatae commixtionis excessus per velamentum erroris hujusmodi, excusationis ulterius possint habere diffugium; statuimus, ut tales utriusque sexus in omni christianorum provincia, et in omni tempore, qualitate habitus publice ab aliis populis distinguantur, cum etiam per Mosen hoc ipsum legatur eis injunctum. In diebus autem lamentationis, et Dominicae passionis, in publicum minime prodeant, eo quod nonnulli ex ipsis, talibus diebus, sicut accepimus, ornatius non erubescunt incedere, ac christianis, qui sacratissimae passionis memoriam exhibentes lamentationis signa praetendunt, illudere non formidant. Illud autem districtissime inhibemus, ne in contumeliam Redemptoris prosilire aliquatenus praesumant. Et quoniam illius dissimulare non debemus opprobrium, qui probra nostra delevit, praecipimus, praesumptores hujusmodi per principes saeculares condignae animadversionis adjectione compesci, ne crucifixum pro nobis praesumant aliquatenus blasphemare. (C. 15, X, De Judaeis, V, 6.)

69. Cum sit nimis absurdum, ut Christi blasphemus in christianos vim potestatis exerceat, quod super hoc Toletanum concilium provide statuit, nos propter transgressorum audaciam in hoc capitulo innovamus; prohibentes, ne Judaei officiis publicis praeferantur, quoniam sub tali praetextu christianis plurimum sunt infesti. Si quis autem officium eis tale commiserit, per provinciale concilium, quod singulis praecipimus annis celebrari, monitione praemissa, districtione qua convenit, compescatur. Officiali vero hujusmodi tamdiu christianorum communio in commerciis et aliis denegetur, donec in usus pauperum christianorum, secundum providentiam dioecesani episcopi, convertatur quidquid fuerit adeptus a christianis occasione officii sic suscepti; et officium cum pudore dimittat, quod irreverenter assumpsit. Hoc idem extendimus ad paganos. (C. 16, X, De Judaeis, V, 6.)

70. Quidam, sicut accepimus, qui ad sacri undam baptismatis voluntarie accesserunt, veterem hominem omnino non exuunt, ut novum perfectius induant; cum prioris ritus reliquias retinentes, christianae religionis decorem tali commixtione confundant. Cum autem scriptum sit: *Maledictus homo, qui terram duabus viis ingreditur;*[18] et indui vestis non debeat lino lanaque contexta; statuimus, ut tales per praelatos ecclesiarum ab observantia veteris ritus omnimodo compescantur, ut quos christianae religioni liberae voluntatis arbitrium obtulit, salutiferae coactionis necessitas in ejus observatione conservet, cum minus malum existat, viam Domini non agnoscere, quam post agnitam retroire. (C. 4, X, De apostat., V, 9.)[19]

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[18] Ecclus. 2:14.

[19] Textus latinus constitutionis de expeditione pro terra sancta recuperanda, apud Mansi, XXII, 1058–67, et Hefele-Leclercq, V, 1390–95, habetur.

CANONES CONCILII LUGDUNENSIS I (OECUMEN. XIII)

ANNO 1245 HABITI[1]

1. Cum in multis juris articulis infinitas reprobetur, proinde duximus statuendum, ut per illam generalem clausulam, *quidam alii*, quae frequenter in nostris litteris inseritur, ultra tres vel quatuor in judicium non trahantur; quorum nomina in primo citatorio exprimat impetrator, ne fraudi locus forsitan relinquatur, si circa ea possit libere variare. (C. 2, VI°, De rescript., I, 3.)

2. Praesenti decreto duximus statuendum, ne a sede apostolica, vel delegatis ipsius, causae aliquibus committantur, nisi personis, quae vel dignitate sint praeditae, vel in ecclesiis cathedralibus seu aliis collegiatis honorabilibus constitutae, nec alibi quam in civitatibus, vel locis magnis et insignibus, ubi haberi valeat juris copia peritorum, causae hujusmodi agitentur. Judicibus vero, qui contra hoc statutum ad alia loca alterutram partium citaverint vel utramque, non pareatur impune, nisi citatio de communi utriusque partis praecesserit voluntate.

3. In electionibus et postulationibus, ac scrutiniis, ex quibus jus oritur eligendi, vota conditionalia, alternativa, et incerta penitus reprobamus; statuentes, ut hujusmodi votis pro non adjectis habitis, ex puris consensibus celebretur electio; voce illorum, qui non pure consenserint, ea vice in alios recidente. (C. 2, VI°, De elect., I, 6.)

4. Statuimus ut conservatores, quos plerumque concedimus, a manifestis injuriis et violentiis defendere possint quos eis committimus defendendos, nec ad alia, quae judicialem indaginem exigunt, suam valeant extendere potestatem. (C. 1, VI°, De off. et potest. jud. delegat., I, 14.)

5. Juris esse ambiguum non videtur, judicem delegatum, qui a sede apostolica ad hoc mandatum non receperit speciale, jubere non posse, alterutram partium coram se personaliter in judicio comparere, nisi causa fuerit criminalis, vel nisi pro veritate dicenda, vel juramento calumniae faciendo juris necessitas partes coram eo personaliter exegerit praesentari. (C. 1, VI°, De judiciis, II, 1.)

6. Exceptionis peremptoriae, seu defensionis cujuslibet principalis cognitionem negotii continentis ante litem contestatam objectus, nisi de re judicata, vel transacta, seu finita excipiat litigator, litis contestationem non impediat, nec retardet, licet dicat objector, non fuisse rescriptum obtentum, si, quae sunt impetranti opposita, fuissent exposita deleganti. (C. 1, VI°, De litis contest., II, 3.)

7. Actor, qui venire ad terminum, ad quem citari adversarium fecerat, non curavit, venienti reo in expensis propter hoc factis legitime condemnetur; ad citationem aliam,

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[1] Hardouin, *Conciliorum coll.*, VII, 386–91; Hefele-Leclercq, V, 1642–74; Mansi, XXIII, 619–28.

nisi sufficienter caverit quod in termino fideliter compareat, minime admittendus. (C. 1, VI°, De dolo et contum., II, 6.)

8. Dispendia litium aequitatis compendio volentes qua possumus industria coarctare, statutum felicis recordationis Innocentii papae III,[2] super hoc editum ampliantes, decrevimus, ut si quis contra alium plures personales voluerit movere quaestiones, non ad diversos judices, sed ad eosdem, super omnibus hujusmodi quaestionibus litteras studeat impetrare. Qui vero contrarium fecerit, omni commodo careat litterarum, nec processus valeat habitus per easdem; alias reo, si eum per ipsas fatigaverit, in expensis legitimis condemnandus. Reus quoque, si eodem durante judicio actorem sibi obnoxium dixerit, reconventionis beneficio vel conventionis, si litteras contra eum impetrare maluerit, de jure suo debet apud eosdem judices experiri, nisi eos ut suspectos poterit recusare, simili poena, si contra fecerit, puniendus. (C. 3, VI°, De rescript., I, 3.)

9. Eum qui super dignitate, personatu, vel beneficio ecclesiastico obtinendis, cum aliquo litigat possessore, ob partis adversae contumaciam causa rei servandae, in ipsorum possessionem statuimus non admittendum, ne per hoc ad ea ingressus patere valeat vitiosus; sed liceat in hoc casu contumacis absentiam divina replente praesentia, etiam lite non contestata, diligenter examinato negotio, ipsum fine debito terminare. (C. un., VI°, De eo qui mittit. in possess. causa rei servandae, II, 7.)

10. Statuimus, ut positiones negativas, quae probari non possunt nisi per confessionem adversarii, judices admittere possint, si aequitate suadente viderint expedire. (C. 1, VI°, De confess., II, 9.)

11. Legitima suspicionis causa contra judicem assignata, et arbitris a partibus secundum formam juris electis, qui de ipsa cognoscant, saepe contingit, quod ipsis in idem convenire nolentibus, nec tertium advocantibus, cum quo ambo, vel alter ipsorum procedant ad decisionem ipsius negotii, ut tenentur, judex proferat excommunicationis sententiam contra eos, quam ipsi tum propter odium, tum propter favorem partium diutius vilipendunt. Quare causa ipsa plus debito prorogata non proceditur ad cognitionem negotii principalis. Volentes igitur morbo hujusmodi necessarium adhibere medelam, statuimus, ut ipsis arbitris per judicem terminus competens praefigatur, infra quem in idem conveniant, vel tertium concorditer advocent, cum quo ambo, vel alter ipsorum, ejusdem suspicionis negotium terminare procurent. Alioquin judex ex tunc in principali negotio procedere non omittat. (C. 2, VI°, De appell., II, 15.)

12. Statuimus, ut nullus judicum participantes cum excommunicatis ab eo in locutione, et aliis, quibus ligatur participans excommunicatione minori, ante commonitionem canonicam, excommunicare praesumat; salvis constitutionibus contra illos legitime promulgatis, qui in crimine praesumunt participare damnato. Quod si ex locutione, et aliis, quibus participans labitur in minorem, excommunicatus fortius indurescat; poterit judex post commonitionem canonicam hujusmodi participantes consimili damnare censura. Aliter autem in participantes excommunicatio prolata non teneat, et proferentes poenam legitimam poterunt formidare. (C. 3, VI°, De sentent. excomm., V, 11.)

13. Cura nos pastoralis solicitat et hortatur, ut lapsis consulamus ecclesiis, et, ne labantur in posterum, provideamus constitutione salubri. Cum igitur usurarum vorago

[2] In quibusdam cod. legitur, et recte, Gregorii papae IX, predecessoris nostri.

multas ecclesias pene destruxerit, et nonnulli praelati circa solutionem debitorum, praesertim a suis praedecessoribus contractorum, negligentes inveniantur admodum et remissi, ac ad contrahenda majora debita, et obligandas res ecclesiae nimis proni, desides etiam in custodiendis rebus inventis, malentes in propriam laudem modicum novi facere, quam bona custodire, dimissa recuperare, deperdita restaurare, ac resarcire ruinas; nos ne de cetero se de excusatione tamen utili excusare, ac in praedecessores sive alios fundere valeant culpam suam, praesentis concilii approbatione sancimus, ut pontifices, abbates, decani, ceterique legitimam et communem administrationem gerentes, infra unum mensem, postquam administrationem adierint, intimato prius proxime superiori, ut per se, vel per aliquam personam ecclesiasticam idoneam et fidelem intersit praesentibusque capitulo vel conventu propter hoc specialiter evocatis, inventarium rerum administrationis susceptae confici faciant, in quo mobilia et immobilia, libri, chartae, instrumenta, privilegia, ornamenta, seu paramenta ecclesiastica, et cuncta, quae ad instructionem urbani fundi, seu rustici pertinent; necnon debita ac credita diligentissime conscribantur; ut in quo statu ecclesiam vel administrationem susceperint, et procedente tempore gubernarint, ac in morte vel cessione dimiserint, per superiorem, si necesse fuerit, et eos, qui sunt ecclesiarum deputati servitiis, liquido cognoscatur. Archiepiscopi vero, qui praeter Romanum pontificem, superiorem non habent, aliquem ex suffraganeis, ut personaliter vel per alium, ut est expressum superius, et abbates, ac alii praelati minores exempti, unum vicinum episcopum, qui nihil juris in exempta ecclesia sibi vindicet, ad id studeant evocare; dictumque inventarium tam substituti praelati, quam sui collegii, necnon et superioris suffraganei, seu vicini episcopi, ad hoc vocatorum, muniatur sigillis, in archivis ecclesiae cum cautela debita conservandum. Et nihilominus inventarii ejusdem transcriptum tam idem institutus, quam praelatus ad hoc vocatus penes se habeat simile sigillatum. Inventa quoque custodiantur fideliter, et de ipsis administratio digna geratur; et comperta debita de mobilibus ecclesiae, si fieri potest, cum celeritate solvantur. Si vero mobilia non sufficiant ad solutionem celerem faciendam, omnes proventus ad solutionem convertantur debitorum, quae usuraria fuerint, vel etiam onerosa; deductis de ipsis proventibus expensis dumtaxat necessariis, praelato, collegioque rationabiliter computandis. Si autem debita non fuerint onerosa, vel usuraria, tertia pars eorumdem proventuum, vel major, cum illorum consilio, quos ad conficiendum inventarium vocandos diximus, pro satisfactione hujusmodi deputentur. Porro ejusdem concilii auctoritate firmiter inhibemus, ne praedicti personas suas, vel ecclesias sibi commissas, pro aliis obligent, nec pro se vel ipsis ecclesiis contrahant debita, quibus possit imminere gravamen. Si vero evidens urgeat necessitas, vel ecclesiarum rationabilis suadeat utilitas, praelati cum superiorum, archiepiscopi, et abbates exempti cum praedictorum, collegiorumque suorum consilio et consensu, debita non usuraria, si potest fieri, nunquam tamen in nundinis vel mercatis publicis contrahant. Et contractuum litteris debitorum et creditorum nomina, et causae, quare contrahatur debitum, etiamsi in utilitatem ecclesiae sit conversum inferantur; et ad id personas ecclesiasticas vel ecclesias nullatenus volumus obligari. Privilegia siquidem ecclesiarum, quae securo loco fideliter custodiri mandamus, nequaquam pignori obligentur; nec etiam res aliae, nisi forte pro necessariis et utilibus debitis cum praedicta solemnitate contractis. Ut autem haec salubris constitutio inviolabiliter observetur, et fructus appareat quem ex ipsa provenire speramus, ordinandum duximus et irrefragabiliter statuendum, quod omnes abbates, et priores, necnon et decani, vel praepositi cathedralium seu aliarum ecclesiarum, semel saltem in anno in ipsorum collegiis districtam suae administrationis faciant rationem, et coram superiore visitante conscripta et consignata hujusmodi ratio fideliter recitetur. Archiepiscopi vero, et episcopi, statum administrationis bonorum ad mensam propriam pertinentium, similiter singulis annis capitulis suis, et nihilominus episcopi metropolitanis,

et metropolitani legatis apostolicae sedis, vel aliis, quibus fuerit ab eadem sede suarum ecclesiarum visitatio delegata, insinuare debita fidelitate procurent. Computationes vero conscriptae semper in thesauro ecclesiae ad memoriam reserventur; ut in computatione annorum sequentium praeteriti temporis et instantis diligens habeatur collatio; ex qua superior administrantis diligentiam vel negligentiam comprehendat; quam siquidem negligentiam, solum Deum habens prae oculis, hominis amore, odio, vel timore postpositis, tanta et tali animadversione castiget, quod nec a Deo, nec a superiore, vel sede apostolica, mereatur propter hoc recipere ultionem. Non solum autem a futuris praelatis, sed etiam a jam promotis, praesentem constitutionem praecipimus observari.

14. Arduis mens nostra occupata negotiis, curisque distracta diversis, inter cetera, circa quae attentionis invigilat oculo, ad Constantinopolitani liberationem imperii suae considerationis aciem specialiter dirigit; hanc ardenti desiderio concupiscit, erga eam jugi cogitatione versatur. Et licet apostolica sedes pro ipsa grandis diligentiae studio, et multiplicis subventionis remedio ferventer institerit, ac diu catholici non sine gravibus laboribus, et onerosis sumptibus, anxiisque sudoribus, et deflenda sanguinis effusione certaverint; nec tanti auxilii dextera imperium ipsum totaliter de inimicorum jugo potuerit, impedientibus peccatis, eripere, propter quod non immerito dolore turbamur; quia tamen ecclesiae corpus ex membri causa cari, videlicet imperii praefati carentia, notam probrosae deformitatis incurreret et sustineret debilitatis dolendae jacturam; possetque digne nostrae ac ipsius ecclesiae desidiae imputari, si fidelium destitueretur suffragio, et relinqueretur hostibus libere opprimendum, firma intentione proponimus eidem imperio efficaci et celeri subsidio subvenire, ut ecclesia ferventi ad illius exurgente succursum manumque porrigente munitam. Imperium ipsum de adversariorum dominio erui valeat, et reduci, auctore Domino, ad ejusdem corporis unitatem, sentiatque post conterentem inimicorum malleum, dexteram matris ecclesiae consolantem, et post assertionis erroneae caecitatem, visum, catholicae fidei professione, resumat. Ad liberationem autem ipsius eo magis ecclesiarum praelatos, aliosque viros ecclesiasticos vigiles et intentos existere, ac opem et operam convenit exhibere, quo amplius ejusdem fidei et ecclesiasticae libertatis augmentum, quod per liberationem hujusmodi principaliter proveniret, procurare tenentur; maxime quia dum praedicto subvenitur imperio, consequenter subsidium impeditur terrae sanctae. Sane ut festina fiat et utilis imperio praefato subventio, ex communi concilii approbatione statuimus, ut medietas omnium proventuum, tam dignitatum et personatuum, quam praebendarum ecclesiasticarum, aliorumque beneficiorum ecclesiasticorum, personarum illarum, quae in ipsis residentiam non faciunt personalem per sex menses ad minus, sive unum habeant sive plura, eis qui nostris, et fratrum nostrorum, ac suorum praelatorum immorantur obsequiis, aut sunt in peregrinatione, vel scholis, seu ecclesiarum suarum negotia de ipsorum mandato procurant, aut assumpserunt, vel assument crucis signaculum in praedictae terrae, vel personaliter in ejusdem imperii proficiscentur succursum, exceptis; et si aliqui eorumdem exceptorum, praeter hujusmodi crucesignatos et proficiscentes, de reditibus ecclesiasticis ultra valentiam centum marcarum argenti percipiunt, annuatim tertia pars residui, ipsius imperii subsidio colligenda, per eos qui ad hoc ab apostolica fuerint ordinati providentia usque ad triennium integre deputentur. Non obstantibus quibuscumque consuetudinibus vel statutis ecclesiarum, seu quibuslibet indulgentiis ipsis ecclesiis vel personis ab apostolica sede concessis, juramento aut quacumque firmitate alia roboratis. Et si forte super hoc scienter fraudem commiserint, sententiam excommunicationis incurrant. Nos vero de obventionibus ecclesiae Romanae, deducta prius ex eis decima succursui terrae deputanda praedictae, decimam praedicti pro subventione imperii plenarie tribuemus. Porro cum idem juvatur imperium, auxilium praestatur potissime ipsi terrae, ac ad recuperationem ejus praecipue insistitur, dum ad

ipsius liberationem imperii laboratur; de omnipotentis Dei misericordia, ac beatorum Petri et Pauli apostolorum auctoritate confisi, ex illa, quam nobis licet indignis ligandi atque solvendi contulit potestate, omnibus eidem imperio succurrentibus illam suorum peccaminum veniam indulgemus; ipsosque illo privilegio, eaque volumus immunitate gaudere, quae praedictae terrae subvenientibus conceduntur.

15. Perennis obtentu patriae a longis retro temporibus pro redimenda terra, quam Dei Filius aspersione sui sanguinis consecravit, universitas filiorum ecclesiae non solum expensas innumeras, sed inaestimabilem cruoris affluentiam noscitur effudisse; sicut ex eo moesti corde colligimus, quod pridem contra fideles pugnantibus impiis accidit in partibus transmarinis. Verum cum propter hoc sit in sedis apostolicae voto potissimum, ut de ipsius redemptione terrae, communis desiderii, Deo propitio, proveniat complementum, digne providimus, ut ad procurandum Dei favorem vos nostris litteris excitemus. Rogamus itaque universitatem vestram et obsecramus in Domino Jesu Christo, mandantes quatenus singuli vestrum fideles populos vestrae curae commissos in vestris praedicationibus, vel quando poenitentiam ipsius injungitis, piis monitis inducatis, concessa super hoc, prout expedire videritis, indulgentia speciali, ut in testamentis, quae pro tempore fecerint, aliquid in terrae sanctae vel imperii Romaniae subsidium pro suorum peccaminum remissione relinquant; attentius provisuri, ut quod ipsi ad Crucifixi reverentiam habendo respectum in pecunia pro hujusmodi subventione dederint, in certis locis sub sigillis vestris conservari fideliter, et illa, quae in rebus aliis ad hoc legata fuerint, diligenter in scriptis redigi, faciatis. Hoc autem pietatis opus, in quo sola causa Dei quaeritur et salus fidelium procuratur, sic vestra sinceritas promptis prosequatur affectibus, ut tandem securi de manu superni Judicis caelestis gloriae praemium expectetis.

16. Christianae religionis cultum longius latiusque per orbem diffundi super omnia cupientes, inaestimabilis doloris telo transfodimur, si quando aliqui sic nostro in hac parte obviant desiderio, affectu contrario et effectu, quod ipsum cultum delere penitus de terrae superficie omni studio totaque potentia moliuntur. Sane Tartarorum gens impia christianum populum subjugare sibi, vel potius perimere appetens, collectis jamdudum suarum viribus nationum, Poloniam, Rusciam, Hungariam, aliasque christianorum regiones ingressa, sic in eas depopulatrix insaevit, ut gladio ejus nec aetati parcente nec sexui, sed in omnes indifferenter crudelitate horribili debacchante, inaudito ipsas exterminio devastarit, ac aliorum regna continuato progressu illa sibi, eodem in vagina otiari gladio nesciente, incessabili persecutione substernit; ut subsequenter in robore fortiores exercitus christianos invadens, suam plenius in ipso possit saevitiam exercere, sicque orbato, quod absit, fidelibus orbe, fides exorbitet, dum sublatos sibi gemuerit ipsius gentis feritate cultores. Ne igitur tam detestanda gentis ejusdem intentio proficere valeat, sed deficiat auctore Deo potius, et contrario concludatur eventu, ab universis christicolis attenta est consideratione pensandum, et procurandum studio diligenti, ut sic illius impediatur processus, quod nequeat ad ipsos ulterius quantumcumque potenti armato brachio pertransire. Ideoque sacro suadente concilio universitatem vestram monemus, rogamus et hortamur, attente mandantes, quatenus viam et aditus, unde in terram nostram gens ipsa posset ingredi, solertissime perscrutantes, illos fossatis vel muris, seu aliis aedificiis, aut artificiis, prout expedire videritis, taliter praemunire curetis, quod ejusdem gentis ad vos congressus patere de facili nequeat. Sed prius apostolicae sedi suus denunciari possit adventus; ut ea vobis fidelium destinante succursum, contra conatus et insultus gentis ipsius tuti esse, adjutore Domino, valeatis. Nos enim in tam necessariis et utilibus expensis quas ob id feceritis contribuemus mag-

nifice, ac ab omnibus christianorum regionibus, cum per hoc occurratur communibus periculis, proportionaliter contribui faciemus; et nihilominus super his aliis christifidelibus, per quorum partes habere posset aditum gens praedicta, litteras praesentibus similes destinamus.

17. Pro humani redemptione generis de summis caelorum ad ima mundi descendens et mortem tandem subiens temporalem Dei Filius Jesus Christus, ne gregem sui pretio sanguinis gloriosi redemptum, ascensurus post resurrectionem ad Patrem, absque pastore desereret, ipsius curam beato Petro apostolo, ut suae stabilitate fidei ceteros in christiana religione firmaret, eorumque mentes ad salutis opera suae accenderet devotionis ardore, commisit. Unde nos ejusdem apostoli effecti, disponente Domino, licet immeriti, successores, et ipsius Redemptoris locum in terris quamquam indigne tenentes, circa gregis ejusdem custodiam sollicitis excitati vigiliis et animarum saluti jugis attentione cogitationis intendere submovendo noxia, et agendo profutura debemus, ut excusso a nobis negligentiae somno, nostrique cordis oculis diligentia sedula vigilantibus, animas ipsas Deo lucrifacere, sua nobis cooperante gratia, valeamus.

Cum igitur illi, qui sic horrenda inhumanitate, detestandaque saevitia, mortem sitiunt aliorum, ut ipsos faciant per assassinos occidi, non solum corporum sed mortem procurent etiam animarum, nisi eos exuberans gratia divina praevenerit, ut sint armis spiritualibus praemuniti, ac omnis potestas tribuatur a Domino ad justitiam, rectumque judicium exercendum; nos tanto periculo volentes occurrere animarum, et tam nefarias praesumptiones ecclesiasticae animadversionis mucrone ferire, ut metus poenae meta hujusmodi praesumptionis existat, praesertim cum nonnulli magnates taliter perimi formidantes, coacti fuerint securitatem ab eorumdem assassinorum domino impetrare, sicque ab eo non absque christianae dignitatis opprobrio redimere quodammodo vitam suam, sacri approbatione concilii statuimus, ut quicumque princeps, vel praelatus, seu quaevis alia ecclesiastica saecularisve persona quempiam christianorum per praedictos assassinos interfici fecerit, vel mandaverit, quamquam mors ex hoc forsitan non sequatur, aut eos receptaverit vel defenderit, seu occultaverit, excommunicationis et depositionis a dignitate, honore, ordine, officio, et beneficio incurrat sententias ipso facto; et illa libere aliis per illos, ad quos eorum collatio pertinet, conferantur; sit etiam cum suis bonis mundanis omnibus tamquam christianae religionis aemulus a toto christiano populo perpetuo diffidatus; et postquam probabilibus constiterit argumentis aliquem scelus tam execrabile commisisse, nullatenus alia excommunicationis vel depositionis seu diffidationis adversus eum sententia requiratur. (C. 1, VI°, De homicidio, V, 4.)

SERIES SECUNDA [3]

1. Statuimus, ut si quis electionem, postulationem vel provisionem factam impugnat in formam objiciens aliquid, vel personam, et propter hoc ad nos appellari contigerit, tam is qui opponit, quam qui defendit, et generaliter omnes quorum interest, et quos causa contingit, per se vel procuratores idoneos ad causam sufficienter instructos, ad sedem apostolicam a die objectionis iter arripiant intra mensem. Sed si pars aliqua non venerit per viginti dies post adventum alterius partis expectata in electionis negotio non obstante cujusquam absentia, sicut de jure fuit, procedatur. Hoc autem in dignitatibus, personatibus et canonicis observari volumus et mandamus. Adjicimus etiam, ut qui non plene probavit, quod in formam opposuit, ad expensas, quas propter hoc pars altera se fecisse docuerit, condemnetur. Qui vero in probatione defecerit ejus, quod objicit in personam, a beneficiis ecclesiasticis triennio noverit se suspensum, ad quae si in-

[3] Cf. p. 316 f.

fra illud tempus se propria temeritate ingesserit, tunc illis ipso jure perpetuo sit privatus, nullam super hoc de misericordia spem aut fiduciam habiturus, nisi manifestissimis constiterit argumentis quod ipsum a calumniae vitio causa probabilis et manifesta excusat. (C. 1, VI°, De elect., I, 6.)

2. Frequens et assidua nos querela circumstrepit, quod spoliationis exceptio nonnunquam in judiciis calumniose proposita, causas ecclesiasticas impedit et perturbat; dum enim exceptioni insistitur, appellationes interponi contingit, et sic intermittitur et plerumque perimitur causae cognitio principalis. Et propterea nos, qui voluntarios labores appetimus, ut quietem aliis praeparemus, finem litibus cupientes imponi, et calumniae materiam amputare, statuimus, ut in civilibus negotiis spoliationis objectu, quae ab alio, quam ab actore facta proponitur, judex in principali procedere non postponat. Sed si in civilibus ab actore, in criminalibus autem se spoliatum reus asserat a quocumque, intra quindecim dierum spatium post diem in quo proponitur quod asserit comprobabit; alioquin in expensis, quas interim actor ob hoc fecerit, judiciali taxatione praehabita, condemnetur; alias si judici aequum visum fuerit, puniendus. Illum autem spoliatum intelligi volumus in hoc casu, cum criminaliter accusatur, qui tota sua substantia vel majore parte ipsius se per violentiam destitutum affirmat, et secundum hoc loqui canones, sano credendum est intellectu, quia nec nudi contendere, nec inermes inimicis nos opponere debemus; habet enim spoliatus privilegium ut non possit exui jam nudatus. Solet autem inter scholasticos dubitari, si expoliatus a tertio, de expoliatione contra suum accusatorem excipiat, an ei tempus a judice debeat indulgeri, infra quod restitutionem imploret, ne forte sic velit existere ut omnem accusationem eludat, quod satis aequitati et juri consonum existimamus. Quod si infra tempus indultum restitutionem non petierit, et causam cum potuerit non ducat ad finem, non obstante spoliationis exceptione, deinceps poterit accusari. Ad hoc sancimus ut rerum privatarum spoliatio agenti super ecclesiasticis, vel e contrario, nullatenus opponatur. (C. un., VI°, De restitut. spoliat., II, 5.)

3. Pia consideratione statuit mater ecclesia, quo majoris excommunicationis exceptio, in quacumque parte judiciorum opposita lites differat et repellat agentes, ut ex hoc magis sententia ecclesiastica timeatur, communionis periculum evitetur, contumaciae vitium reprimatur, et excommunicati, dum a communibus actibus excluduntur, rubore suffusi ad humilitatis gratiam, et reconciliationis affectum facilius inclinentur; sed hominum succrescente malitia, quod provisum est ad remedium, tendit ad noxam. Dum enim in causis ecclesiasticis frequentius haec exceptio per malitiam opponitur, contingit interdum differri negotia, et partes fatigari laboribus et expensis; proinde, quia morbus iste quasi communis irrepsit, dignum duximus communem adhibere medelam. Si quis igitur excommunicationem opponit, speciem illius et nomen excommunicatoris exprimat, sciturus eam rem se deferre debere in publicam notionem, quam intra octo dierum spatium, die in quo proponitur minime computato, probare valeat apertissimis documentis. Quod si non probaverit, judex in causa procedere non omittat, reum in expensis, quas actor ob hoc diebus illis se fecisse docuerit, praehabita taxatione, condemnans. Si vero postmodum instantia durante judicii et probationis copia succedente, de eadem excommunicatione, vel alia excipiatur iterum, et probetur, actor in sequentibus excludatur, donec meruerit absolutionis gratiam obtinere, iis, quae praecesserunt, in suo robore duraturis. Proviso quod ultra duas vices, haec non opponatur exceptio; praeterquam si excommunicatio nova emerserit, vel evidens et prompta probatio supervenerit de antiqua. Sed si post rem judicatam talis exceptio proponatur, executionem impediet, sed sententia, quae praecessit, non minus

robur debitum obtinebit, eo tamen salvo, ut si actor excommunicatus sit publice et hoc judex noverit quandocumque, etsi de hoc reus non excipiat, judex suo officio actorem repellere non postponat. (C. 1, VI°, De except., II, 12.)

4. Cum aeterni tribunal Judicis illum reum non habeat, quem injuste judex condemnat, testante propheta, *non damnabit eum, cum judicabitur illi,*[4] caveant judices ecclesiastici, et prudenter attendant ut in causarum processibus nihil vindicet odium, vel favor usurpet, timor exulet, praemium aut expectatio praemii justitiam non evertat, sed stateram gestent in manibus, lances appendant aequo libramine, ut in omnibus, quae in causis agenda fuerint, praesertim in concipiendis sententiis et ferendis, prae oculis habeant solum Deum, illius imitantes exemplum, qui querelas populi tabernaculum ingressus ad Dominum referebat; ut secundum ejus imperium judicaret. Si quis autem judex ecclesiasticus, ordinarius aut etiam delegatus, famae suae prodigus, et proprii persecutor honoris contra conscientiam et contra justitiam in gravamen partis alterius in judicio quicquam fecerit per gratiam, vel per sordes, ab executione officii per annum noverit se suspensum; ad aestimationem litis parti quam laeserit nihilominus condemnandus; sciturus quod si suspensione durante damnabiliter ingesserit se divinis, irregularitatis laqueo se involvet secundum canonicas sanctiones, a qua nonnisi per sedem apostolicam poterit liberari, salvis aliis constitutionibus, quae judicibus male judicantibus poenas ingerunt et infligunt. Dignum est enim, ut qui in tot praesumpserit offendere, poena multiplici castigetur. (C. 1, VI°, De sentent. et re judic., II, 14.)

5. Cordi nobis est lites minuere et a laboribus relevare subjectos. Sancimus igitur, ut si quis im judicio vel extra super interlocutoria vel gravamine ad nos duxerit appellandum, causam appellationis in scriptis assignare deproperet, petat apostolos, quos ei praecipimus exhiberi, in quibus appellationis causam exprimat et cur appellatio non sit admissa vel si appellationi forsan ex superioris reverentia sit delatum. Post hoc appellatori secundum locorum distantiam, personarum, et negotii qualitatem tempore prosecutionis indulto, si voluerit appellatus et petierit, principales personae per se vel per procuratores instructos cum mandato ad agendum, et cum rationibus et munimentis ad causam spectantibus, accedant ad sedem apostolicam sic parati, ut, si nobis visum fuerit expedire, finito appellationis articulo, vel de partium voluntate omisso, procedatur in negotio principali, quantum de jure poterit et debebit; his quae in appellationibus a definitivis sententiis interpositis antiquitas statuit, non mutatis. Quod si appellator, quae praemissa sunt, non observet, reputabitur non appellans, et ad prioris judicis redibit examen in expensis legitimis condemnandus. Si autem appellatus contempserit hoc statutum, in eum tamquam in contumacem tam in expensis quam in causa, quantum a jure permittitur, procedatur. Justum est equidem ut in eum jura insurgant, qui jus et judicem et partem eludit. (C. 1, VI°, De appell., II, 15.)

6. Volentes libertatem, quam nonnullis apostolica sedes privilegio exemptionis indulsit, sic integram conservari, ut contra illam alii non insurgant, et ipsi ejus limites non excedant; declaratione irrefragabili definimus, ut quantumcumque sic exempti gaudeant libertate, nihilominus tamen ratione delicti, sive contractus, aut rei, de qua contra ipsos agitur, rite possint coram locorum ordinariis conveniri, et illi, quoad hoc, suam in ipsos jurisdictionem, possunt, prout jus exigit, exercere. Numquid ergo carent omnino in his commodo libertatis? non utique, quia nec coram ordinariis ipsis, dummodo sit in loco exempto commissum delictum, vel contractus initus, aut res litigiosa, nec ubi domicilium habent, si alibi delinquant, vel contrahant, aut res ipsa consistat,

[4] Ps. 36:33.

conveniri possunt aliquatenus super istis, neque domiciliorum praetextu locorum dioecesani, si ubi deliquerunt vel contraxerunt, aut res ipsa exigit, illic conveniantur, remittendi eos illuc, vel ipsis, ut illic respondeant, injungendi habeant aliquam potestatem, salvis nihilominus casibus aliis, in quibus eos episcoporum jurisdictioni subesse canonica praecipiunt instituta. Etiam idipsum decernimus circa illos, quibus ut nonnisi sub uno certo judice teneantur de se conquerentibus respondere, apostolico privilegio est concessum. In eos autem, quibus ne interdici, suspendi vel excommunicari a quoquam valeant a sede apostolica est indultum, sicut sunt religiosi quamplures, in quorum privilegiis continetur, ne quisquam episcopus sive archiepiscopus monasteriorum suorum monachos pro ulla causa, ullove loco interdicere, suspendere vel excommunicare praesumat, iidem ordinarii jurisdictionem suam, quantum ad ista, ubicumque illi fuerint, penitus exercere non possint. Nisi forsan ipsi monachi ad monasteriorum suorum prioratus ordinariis eisdem subjectos, ut vel gerant eorum regimen, vel in eis tamquam proprii locorum ipsorum monachi resideant, fuerint destinati; tunc enim, etsi libere possint ad eadem monasteria revocari, ac tam illorum, quam ipsorum prioratuum monachi reputentur, cum non sit inconveniens aliquem sic utrobique locum habere monachicum, unum alteri subesse monasterio, vel ab ipso noscitur dependere; ratione tamen eorumdem prioratuum dicti ordinarii sua jurisdictione in ipsis etiam quoad praemissa quandiu morantur in illis, licite uti possunt. (C. 1, VI°, De privileg., V, 7.)

7. Cum medicinalis sit excommunicatio, non mortalis, disciplinans, non eradicans, dum tamen is, in quem lata fuerit, non contemnat; caute provideat judex ecclesiasticus ut in ea ferenda ostendat se prosequi quod corrigentis est et medentis. Quisquis igitur excommunicat, excommunicationem in scriptis proferat, et causam expresse conscribat, propter quam excommunicatio proferatur. Exemplum vero hujusmodi scripturae teneatur excommunicato tradere intra mensem post diem sententiae si fuerit requisitus; super qua requisitione fieri volumus publicum instrumentum, vel litteras testimoniales confici sigillo authentico consignatas. Si quis autem judicum hujusmodi constitutionis temerarius extiterit violator, per mensem unum ab ingressu ecclesiae et divinis noverit se suspensum. Superior vero, ad quem recurritur, sententiam ipsam sine difficultate relaxans, latorem excommunicato ad expensas, et omne interesse condemnet, et alios puniat animadversione condigna, ut poena docente discant judices quam grave sit excommunicationum sententias sine maturitate debita fulminare. Et haec eadem in suspensionis et interdicti sententiis volumus observari. Caveant autem ecclesiarum praelati et judices universi ne praedictam poenam suspensionis incurrant; quoniam si contigerit eos sic suspensos divina officia exequi sicut prius, irregularitatem non effugient juxta canonicas sanctiones, super qua nonnisi per summum pontificem poterit dispensari. (C. 1, VI°, De sentent. excomm., V, 11.)

8. Solet a nonnullis in dubium revocari, an cum aliquis per superiorem absolvi postulat ad cautelam, dum in se latam excommunicationis sententiam asserit esse nullam, sine contradictionis obstaculo munus ei debeat absolutionis impendi? Et an ante absolutionem hujusmodi, is qui se offert in judicio probaturum se post appellationem legitimam excommunicatione innodatum, vel intolerabilem errorem in sententia fuisse patenter expressum, sit in ceteris, excepto probationis illius articulo, evitandus? In prima igitur dubitatione sic statuimus observandum, ut petenti absolutio non negetur, quamvis in hoc excommunicator vel adversarius se opponat; nisi eum excommunicatum pro manifesta dicat offensa. In quo casu terminus octo dierum indulgebitur sic dicenti, ut si probaverit quod opponit, non relaxetur sententia, nisi prius sufficiens praestetur

emenda vel competens cautio de parendo juri, si offensa dubia proponatur. In secunda vero quaestione statuimus ut is, qui ad probandum admittitur, pendente probationis articulo in ceteris, quae ut actor in judiciis attentaverit, interim evitetur. Extra judicium vero in officiis, postulationibus, et electionibus et aliis legitimis actibus nihilominus admittatur. (C.2, VI°, De sentent. excomm., V, 11.)

9. Quia periculosum est episcopis et eorum superioribus propter executionem pontificalis officii, quod frequenter incumbit, ut in aliquo casu interdicti vel suspensionis incurrant sententiam ipso facto; nos deliberatione provida duximus statuendum ut episcopi, et alii superiores praelati nullius constitutionis occasione sententiae sive mandati praedictam incurrant sententiam ullatenus ipso jure, nisi in ipsis de episcopis et superioribus expressa mentio habeatur. (C.4, VI°, De sentent. excomm., V, 11.) [5]

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[5] Textus latinus constitutionis de expeditione pro terra sancta recuperanda, apud Hardouin, VII, 392–95, et Hefele-Leclercq, V, 1657–61, inveniri potest.

CANONES CONCILII LUGDUNENSIS II (OECUMEN. XIV)

ANNO 1274 HABITI[1]

1. Fideli ac devota professione fatemur, quod Spiritus Sanctus aeternaliter ex Patre, et Filio, non tanquam ex duobus principiis, sed tanquam ex uno principio, non duabus spirationibus, sed unica spiratione procedit. Hoc professa est hactenus, praedicavit et docuit, hoc firmiter tenet, praedicat, profitetur et docet sacrosancta ecclesia Romana, mater omnium fidelium et magistra; hoc habet orthodoxorum patrum atque doctorum Latinorum pariter et Graecorum incommutabilis et vera sententia. Sed quia nonnulli propter irrefragabilis praemissae ignorantiam veritatis in errores varios sunt prolapsi; nos hujusmodi erroribus viam praecludere cupientes, sacro approbante concilio, damnamus et reprobamus omnes qui negare praesumpserint aeternaliter Spiritum Sanctum ex Patre et Filio procedere, sive etiam temerario ausu asserere quod Spiritus Sanctus ex Patre et Filio tanquam ex duobus principiis, et non tamquam ex uno procedat. (C. 1, VI°, De summa trinit., I, 1.)

2. Ubi periculum majus intenditur, ibi procul dubio est plenius consulendum. Quam gravibus autem sit onusta dispendiis, quot et quantis sit plena periculis ecclesiae Romanae prolixa vacatio, exacti temporis consideratio edocet, et considerata prudenter illius discrimina manifestant. Hinc nos evidens evocat ratio, ut dum reformandis etiam minoribus nostra solerter vacat intentio, ea quae periculosiora sunt, nequaquam absque remedio reformationis accommodae relinquamus. Ideoque omnia, quae pro vitanda discordia in electione Romani pontificis a nostris sunt praedecessoribus, et praecipue a felicis recordationis Alexandro papa III salubriter instituta, omnino immota in sua firmitate manere censentes (nihil enim illis detrahere intendimus, sed quod experientia deesse probavit, praesenti constitutione supplere), hoc sacro concilio approbante statuimus, ut si eumdem pontificem in civitate, in qua cum sua curia residebat, diem claudere contingat extremum, cardinales, qui fuerint in civitate ipsa praesentes, absentes expectare decem diebus tantummodo teneantur. Quibus elapsis, sive absentes venerint, sive non, ex tunc omnes conveniant in palatio, in quo idem pontifex habitabat, contenti singuli singulis tantummodo servientibus clericis, vel laicis, prout duxerint eligendum. Illis tamen, quibus patens necessitas id suggerit indulgeri, duos habere permittimus, ejusdem electionis arbitrio reservato. In eodem autem palatio unum conclave, nullo intermedio pariete, seu alio velamine, omnes habitent in communi. Quod, servato libero ad secretam cameram aditu, ita claudatur undique, ut nullus illuc intrare valeat vel exire; nulli ad eosdem cardinales aditus pateat, vel facultas secrete loquendi cum eis; nec ipsi aliquos ad se venientes admittant, nisi eos qui de voluntate omnium cardinalium inibi praesentium, pro iis tantum quae ad electionis instantis negotium pertinent, vocarentur. Nulli etiam fas sit, ipsis cardinalibus, vel eorum alicui nuntium mittere, vel scripturam. Qui vero contra fecerit, scripturam mittendo vel nuntium, aut cum aliquo ipsorum secreto loquendo, ipso facto sententiam excommunicationis incurrat.

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[1] Hardouin, *Conciliorum coll.*, VII, 705–19; Hefele-Leclercq, VI, 181–208; Mansi, XXIV, 81–102.

In conclavi tamen praedicto aliqua fenestra competens dimittatur, per quam eisdem cardinalibus ad victum necessaria commode ministrentur; sed per eam nulli ad ipsos patere possit ingressus. Verum si, quod absit, infra tres dies, postquam, ut praedicitur, conclave praedictum iidem cardinales intraverint, non fuerit ipsi ecclesiae de pastore provisum, per spatium quinque dierum immediate sequentium, singulis diebus, tam in prandio, quam in coena, uno solo ferculo sint contenti. Quibus provisione non facta decursis, ex tunc tantummodo panis, vinum et aqua ministrentur eisdem, donec eadem provisio subsequatur. Provisionis quoque hujusmodi pendente negotio, dicti cardinales nihil de camera papae recipiant, nec de aliis eidem ecclesiae tempore vacationis obvenientibus undecumque; sed ea omnia, ipsa vacatione durante, sub ejus, cujus fidei et diligentiae camera eadem est commissa, custodia maneant, per eum dispositione futuri pontificis reservanda. Qui autem aliquid receperint, teneantur ex tunc a perceptione quorumlibet redituum ad ipsos spectantium abstinere, donec de receptis taliter plenariam satisfactionem impendant. Eidem quoque cardinales accelerandae provisioni sic vacent attentius, quod se nequaquam de alio negotio intromittant; nisi forsan necessitas adeo urgens incideret, quod eos oporteret de terra ipsius ecclesiae defendenda, vel ejus parte aliqua providere; vel nisi aliquod tam grande, tam evidens periculum immineret, quod omnibus et singulis cardinalibus praesentibus concorditer videretur illi celeriter occurrendum. Sane si aliquis de praedictis cardinalibus conclave praedictum, ut supra exprimitur, non intraverit; aut intrans, absque manifesta causa infirmitatis exierit, ipso minime requisito, nec in ejusdem electionis negotio ulterius admittendo, per alios ad eligendum substituendum pontificem libere procedatur. Si vero infirmitate superveniente, idem conclave aliquem ex iis exire contingat, ipsa etiam infirmitate durante, poterit, ejus suffragio non requisito, ad electionem procedi. Sed si ad alios post sanitatem sibi redditam, seu antea redire voluerit, vel etiam si alii absentes, quos per decem dies diximus expectandos, supervenerint re integra, videlicet antequam eidem ecclesiae sit de pastore provisum; in eodem negotio, in illo statu in quo ipsum invenerint, admittantur; praemissa tam de clausura quam de servientibus cibo ac potu et reliquis, cum aliis servaturi. Porro si quando Romanum potificem extra civitatem praedictam, in qua erat cum sua curia residens, contigerit ab hac luce migrare, teneantur cardinales in civitate, in cujus territorio seu districtu idem pontifex obiit, convenire, nisi sit forsitan interdicta, vel contra ecclesiam Romanam in aperta rebellione persistat. Quo casu in alia viciniori conveniant, similiter nec interdicto subjaceat, nec sit, ut praedicitur, aperte rebellis. In hac etiam civitate, tam quoad expectationem absentium, quam quoad habitationem communem, clausura et cetera omnia, in domo episcopali, vel alia qualibet eisdem cardinalibus deputanda, eadem observentur, quae superius obeunte dicto pontifice in ea, in qua cum sua residebat curia, sunt expressa. Praeterea, quia parum est jura condere, nisi sit qui eadem tueatur, adjiciendo sancimus, ut dominus, aliique rectores et officiales civitatis illius, in qua Romani pontificis celebranda fuerit electio, auctoritate nostra et ejusdem approbatione concilii, potestate sibi tradita, praemissa omnia et singula plene et inviolabiliter, sine fraude ac dolo aliquo, faciant observari; nec cardinales ultra quam praemittitur, arctare praesumant. Super his autem taliter observandis, statim audito summi pontificis obitu, coram clero et populo civitatis ipsius, ad hoc specialiter convocandis, praestent corporaliter juramentum. Quod si forte in praemissis vel circa ea fraudem commiserint, aut ipsa diligenter non observaverint; cujuscumque sint praeeminentiae, conditionis, aut status, omni cessante privilegio, eo ipso excommunicationis sint vinculo innodati, et perpetuo sint infames, nec unquam eis portae dignitatis pateant, nec ad aliquod publicum officium admittantur. Ipsos insuper feudis et bonis ceterisque, quae ab eadem Romana vel quibuslibet aliis ecclesiis obtinent, ipso facto decrevimus esse privatos; ita quod ad ecclesias ipsas plene ac libere revertantur, administratorum earumdem ecclesiarum

arbitrio sine contradictione aliqua disponenda. Civitas vero praedicta, non solum sit interdicto supposita, sed et pontificali dignitate privata. Ceterum quia cum arbitrium vel inordinatus captivat affectus, vel ad certum aliquid obligationis cujusque necessitas adigit, cessat electio, dum libertas adimitur eligendi; cardinales eosdem obsecrantes per viscera misericordiae Dei nostri, per aspersionem sui pretiosi sanguinis obtestamur, ut pensantes attentius quid eis imminet, cum agitur de creatione vicarii Jesu Christi, successoris Petri, rectoris universalis ecclesiae, gregis Dominici directoris, omni privatae affectionis inordinatione deposita, et cujuslibet pactionis, conventionis, obligationis necessitate, necnon condicti et intendimenti contemplatione cessantibus, non in se reciprocent considerationis intuitum, vel in suos, non quae sua sunt quaerant, non commodis privatis intendant, sed nullo arctante ipsorum in eligendo judicium, nisi Deo, puris et liberis mentibus, nuda electionis conscientia, utilitatem publicam libere prosequantur omni conatu et solicitudine, prout possibilitas patitur, id acturi tantummodo, ut eorum ministerio acceleretur utilis et pernecessaria totius mundi provisio, idoneo celeriter eidem ecclesiae sponso dato. Qui autem secus egerint, divinae subjaceant ultioni, eorum culpa, nisi gravi propter hoc peracta poenitentia, nullatenus abolenda. Et nos nihilominus pactiones, conventiones, obligationes, condicta et intendimenta omnia, sive juramenti, sive cujuslibet alterius fuerint vinculo firmitatis annexa, cassamus, irritamus et viribus decernimus omnino carere, ita ut nullus ad illa observanda quomodolibet sit astrictus, nec quisquam ex eorum transgressione notam vereatur fidei non servatae, sed non indignae laudis titulum potius mereatur; cum lex etiam humana testetur, Deo magis transgressiones hujusmodi, quam jurisjurandi observationes, acceptas. Quia vero fidelibus non est tam de solicita quantumcumque interventione fidendum, quam de instantia orationis humilis et devotae sperandum, huic adjicimus sanctioni, ut in omnibus civitatibus ceterisque locis insignibus, ubi primum de memorati pontificis obitu certitudo claruerit, a clero et populo solemnibus pro eo exequiis celebratis, singulis diebus, donec de ipsius ecclesiae provisione indubitatus rumor pertulerit veritatem, humiles preces fundantur ad Dominum, apud eum devotis orationibus insistatur, ut ipse qui concordiam facit in sublimibus suis, sic efficiat eorumdem cardinalium corda in eligendo concordia, quod provisio celer, concors et utilis, prout animarum salus exigit, et totius requirit orbis utilitas, ex ipsorum unanimitate sequatur. Et ne tam salubre praesentis sanctionis edictum ignorantiae negligi praetextu contingat; districte praecipimus, ut patriarchae, archiepiscopi, episcopi et alii ecclesiarum praelati, ceterique, quibus concessum est proponere verbum Dei, clerum et populum propter hoc specialiter frequentius congregandos in suis sermonibus ad supplicium precum suffragia, pro celeri et felici exitu tanti negotii frequantanda, solerter hortentur; et ipsis eadem auctoritate, non solum orationum frequentiam, sed et observantiam, prout circumstantiae pensandae suaserint, jejuniorum indicant. (C. 3, VI°, De elect., I, 6.)

3. Ut circa electiones, postulationes et provisiones ecclesiasticas viam malitiis, prout est possibile, praecludamus, ne diutius periculose vacent ecclesiae, vel personatuum, dignitatum et aliorum ecclesiasticorum beneficiorum provisio differatur; edicto perpetuo providemus, ut si quando aliqui electionibus, postulationibus seu provisionibus se opponunt, proponendo aliqua contra electionis postulationis seu provisionis formam, aut personas eligentium, vel electi, sive illius, cui provisio erat facienda vel facta, et propter hoc contigerit appellari, appellantes in instrumento publico, seu litteris super appellatione confectis, omnia et singula exprimant, quae in formam intendunt objicere, vel personas, coram personis authenticis, aut persona, quae hoc testimonium perhibeant veritati, corporali praestito juramento, quod credunt ea quae sic exprimunt, esse vera et se posse probare. Alioquin tam opponentes, quam (tempore appellationis interpositae,

vel postmodum) adhaerentes eisdem, objiciendi aliqua, quae non fuerint in hujusmodi litteris vel instrumentis expressa, potestatem sibi noverint interdictam; nisi aliquid postea forsan emerserit, vel super antiquis supervenerit probandi facultas, aut aliqua antiqua in opponentium notitiam de novo pervenerint, quae appellantes appellationis emissae tempore verisimiliter ignorare potuerint, et etiam ignorarint. Super hujusmodi autem ignorantia et superveniente facultate probandi, fidem per proprium praestandum corporaliter faciant juramentum, hoc adjiciendo in juramento eodem, quod ad ea probanda credunt se sufficientes probationes habere. Illa sane quae felicis recordationis Innocentius papa IV contra non plene probantes ea quae in formam vel personam objecerunt, statuit, in suo volumus robore permanere. (C.4, VI°, De elect., I, 6.)

4. Avaritiae caecitas, et damnandae ambitionis improbitas aliquorum animos occupantes, eos in illam temeritatem impellunt, ut quae sibi a jure interdicta noverint, exquisitis fraudibus usurpare conentur. Nonnulli siquidem, ad regimen ecclesiarum electi, quia eis jure prohibente non licet, se, ante confirmationem electionis celebratae de ipsis, administrationi ecclesiarum, ad quas vocantur, ingerere, ipsam sibi tanquam procuratoribus, seu oeconomis committi procurant. Cum itaque non sit malitiis hominum indulgendum, nos latius providere volentes, hac generali constitutione sancimus, ut nullus de cetero administrationem dignitatis, ad quam electus est, priusquam celebrata de ipso electio confirmetur, sub oeconomatus, vel procurationis nomine, aut alio de novo quaesito colore, in spiritualibus vel temporalibus, per se vel per alium, pro parte vel in totum, gerere vel recipere, aut illis se immiscere praesumat. Omnes illos, qui secus fecerint, jure, si quod eis per electionem quaesitum fuerit, decernentes eo ipso privatos. (C.5, VI°, De elect., I, 6.)

5. Quam sit ecclesiis ipsarum dispendiosa vacatio, quam periculosa etiam esse soleat animabus, non solum jura testantur, sed etiam magistra rerum efficax experientia manifestat. Cupientes itaque competentibus remediis vacationum diuturnitatibus obviare, hoc perpetuo decreto statuimus, ut si quando fuerit electio in aliqua ecclesia celebrata, electores electionem ipsam, quam citius commode poterunt, electo praesentare, ac petere consensum ipsius, procurent; electus vero illum adhibere infra mensem a tempore praesentationis hujusmodi teneatur. Quem si electus ipse praestare ultra distulerit, jure, si quod ei ex sua electione fuerat acquisitum, ex tunc se noverit eo ipso privatum; nisi forsan ea sit electae personae conditio, ut electioni de se celebratae, absque superioris sui licentia, ex prohibitione, seu quavis provisione sedis apostolicae consentire non possit. Quo casu idem electus, seu electores ipsius, consentiendi licentiam ab ejus superiore, cum ea celeritate, quam superioris ipsius praesentia vel absentia permiserit, petere studeant, et habere. Alioquin, si lapso tempore, pro ejusdem superioris praesentia vel absentia, ut praemittitur, moderando, hujusmodi licentiam eos nequaquam obtinere contingat; electores ex tunc ad electionem aliam procedendi liberam habeant facultatem. Ceterum quivis electus infra tres menses post consensum electioni de se celebratae praestitum, confirmationem electionis ipsius petere non omittat. Quod si justo impedimento cessante, infra hujusmodi trimestre tempus omiserit, electio eadem eo ipso viribus vacuetur. (C.6, VI°, De elect., I, 6.)

6. Perpetuae sanctionis oraculo declaramus, quod scienter in electionibus nominantes indignum, propter suffragium in scrutinio praestitum, nisi adeo in eo persistiterint, quod ex votis eorum communis electio subsequatur, nequaquam eligendi potestate priventur; licet pro eo quod indignum nominando scienter contra conscientias suas agunt, et divinam vindictam et apostolicae ultionis metum, quem qualitas facti suaserit, possint non immerito formidare. (C.7, VI°, De elect., I, 6.)

7. Nulli licere decernimus, postquam in scrutinio nominaverit aliquem, et electio fuerit subsecuta, vel postquam praestiterit electioni de ipso ab aliis celebratae consensum, illum super electione ipsa, nisi ex causis postea emergentibus, impugnare, vel nisi ei morum ipsius antea celata de novo pandatur improbitas, seu alicujus alterius latentis vitii, vel defectus, quae verisimiliter ignorare potuerit, veritas reveletur. De hujusmodi autem ignorantia fidem proprio faciant juramento. (C.8, VI°, De elect., I, 6.)

8. Si quando contigerit, duabus electionibus celebratis, partem alteram eligentium duplo majorem numero inveniri; contra electores, qui partem reliquam sic excedunt, ad extenuationem zeli, meriti, vel auctoritatis ipsorum, reliquis, vel electo ab eis, aliquid opponendi, omnem praesenti decreto interdicimus facultatem. Si quid autem opponere voluerint, quod votum illius, cui opponitur, nullum redderet ipso jure, id eis non intelligimus interdictum. (C.9, VI°, De elect., I, 6.)

9. Quamvis constitutio felicis recordationis Alexandri papae IV praedecessoris nostri causas electionum episcopalium, seu super electionibus episcoporum exortas, non immerito majoribus causis annumerans, cognitiones ipsarum per appellationes quaslibet devolvi afferat ad apostolicae sedis examen; nos tamen, et temerariam appellantium audaciam, et effraenatam appellationum frequentiam refraenare volentes, hac constitutione generali duximus providendum, ut si extra judicium in praedictis electionibus, vel in aliis de dignitatibus episcopatu majoribus celebratis, expressa causa manifeste frivola, contigerit appellari, per appellationem hujusmodi nequaquam ad sedem eamdem negotium devolvatur. Sed cum in electionum earumdem negotiis, in judicio vel extra judicium appellatur, in scriptis ex causa probabili, quae probata deberet ligitima reputari, ad sedem ipsam hujusmodi negotia deferantur. Ceterum in praemissis omnibus casibus, liceat partibus ab hujusmodi appellationibus, nulla tamen interveniente pravitate, recedere, antequam praefatae sedi fuerint praesentatae. Inferiores autem judices, quorum erat ipsarum causarum cognitio, appellatione cessante, an in hoc pravitas intercesserit, ante omnia diligenter inquirant; et si eam intercessisse repererint, se de causis ipsis nullatenus intromittant, sed praefigant dictis partibus terminum peremptorium competentem, in quo cum omnibus actis et monumentis suis apostolico se conspectui repraesentent. (C.10, VI°, De elect., I, 6.)

10. Si forte inter cetera, quae objiciuntur electo, aut postulato, seu alias promovendo ad aliquam dignitatem, evidentem scientiae, vel alium personae defectum opponi contingat; in discussione objectorum illum statuimus ordinem incommutabiliter observandum, ut promovendus super defectu ipso ante omnia subjiciatur examini, cujus eventus examinandis aliis aut dabit initium aut negabit. Ceterum si praemissi examinis exitus, hujusmodi oppositiones docuerit veritate destitui, opponentes omnino a prosecutione causae, in qua talia objecerunt, excludimus, et perinde puniri decernimus, ac si penitus in probatione omnium, quae objecerunt, defecissent. (C.11, VI°, De elect., I, 6.)

11. Sciant cuncti, qui clericos vel quaslibet alias personas ecclesiasticas, ad quos in aliquibus ecclesiis, monasteriis aut aliis piis locis spectat electio, pro eo quod rogati, aut alias inducti, eum pro quo rogabantur, sive inducebantur, eligere noluerunt, vel consanguineos eorum, aut ipsas ecclesias, monasteria, seu loca cetera, beneficiis, sive aliis bonis per se vel per alios spoliando, seu alias injuste persequendo, gravare praesumpserint, se ipso facto excommunicationis sententia innodatos. (C.12, VI°, De elect., I, 6.)

12. Generali constitutione sancimus, universos et singulos qui regalia, custodiam sive guardiam advocationis vel defensionis titulum in ecclesiis, monasteriis, sive quibuslibet aliis piis locis de novo usurpare conantes, bona ecclesiarum, monasteriorum, aut locorum ipsorum vacantium occupare praesumunt, quantaecumque dignitatis honore praefulgeant, clericos etiam ecclesiarum, monachos monasteriorum, et personas ceteras locorum eorumdem, qui haec fieri procurant, eo ipso excommunicationis sententiae subjacere. Illos vero clericos qui se, ut debent, talia facientibus non opponunt, de proventibus ecclesiarum seu locorum ipsorum, pro tempore quo praemissa sine debita contradictione permiserint, aliquid percipere districtius inhibemus. Qui autem ab ipsarum ecclesiarum, ceterorumque locorum fundatione, vel ex antiqua consuetudine, jura sibi hujusmodi vindicant, ab illorum abusu sic prudenter abstineant et suos ministros in eis solicite faciant abstinere, quod ea quae non pertinent ad fructus, sive reditus provenientes vacationis tempore non usurpent, nec bona cetera, quorum se asserunt habere custodiam, dilabi permittant, sed in bono statu conservent. (C. 13, VI°, De elect., I, 6.)

13. Licet canon a felicis recordationis Alexandro papa III praedecessore nostro editus, inter cetera statuerit, ut nullus regimen ecclesiae parochialis suscipiat, nisi vigesimumquintum annum aetatis attigerit, ac scientia et moribus commendandus existat, quoque talis ad regimen assumtus hujusmodi, si monitus, non fuerit praefixo a canonibus tempore in presbyterum ordinatus, a regiminis ejusdem amoveatur officio et alii conferatur; quia tamen in observatione canonis memorati se multi exhibent negligentes, nos periculosam illorum negligentiam volentes juris executione suppleri, praesenti decreto statuimus, ut nullus ad regimen parochialis ecclesiae assumatur, nisi sit idoneus scientia, moribus et aetate. Decernentes, collationes de parochialibus ecclesiis, iis qui non attigerunt vigesimumquintum annum de cetero faciendas, viribus omnino carere. Is etiam, qui ad hujusmodi regimen assumetur, ut gregis sui crediti diligentius gerere curam possit, in parochiali ecclesia, cujus rector extiterit, residere personaliter teneatur; et infra annum a sibi commissi regiminis tempore numerandum se faciat ad sacerdotium promoveri. Quod si infra idem tempus promotus non fuerit, ecclesia sibi commissa, nulla etiam praemissa monitione, sit praesentis constitutionis auctoritate privatus. Super residentia vero, ut praemittitur, facienda, possit ordinarius gratiam dispensative ad tempus facere, prout causa rationabilis id exposcet. (C. 14, VI°, De elect., I, 6.)

14. Nemo deinceps parochialem ecclesiam alicui non constituto in aetate legitima et sacerdotio commendare praesumat. Nec tali etiam nisi unam, et evidenti necessitate vel utilitate ipsius ecclesiae suadente. Hujusmodi autem commendam, ut praemittitur, rite factam declaramus ultra semestris temporis spatium non durare. Statuentes quicquid secus de commendis ecclesiarum parochialium actum fuerit, esse irritum ipso jure. (C. 15, VI°, De elect., I, 6.)

15. Eos qui clericos parochiae alienae absque superioris ordinandorum licentia, scienter, seu affectata ignorantia, vel quocumque alio figmento quaesito, praesumpserint ordinare, per annum a collatione ordinum decernimus esse suspensos; iis quae jura statuunt contra taliter ordinatos in suo robore duraturis. Clericis quoque parochiae taliter suspensorum, postquam eorum suspensio fuerit manifesta, absque ipsorum etiam licentia interim recipiendi ordines ab aliis vicinis episcopis, alias tamen canonice, liberam concedimus facultatem. (C. 2, VI°, De tempor. ordinat., I, 9.)

16. Altercationis antiquae dubium praesentis declarationis oraculo decidentes, bigamos omni privilegio clericali declaramus esse nudatos, et coercitioni fori saecularis addictos; consuetudine contraria non obstante. Ipsis quoque sub anathemate prohibemus deferre tonsuram vel habitum clericalem. (C.un., VI°, De bigamis, I, 12.)

17. Si canonici a divinis cessare voluerint, prout in ecclesiis aliquibus sibi ex consuetudine vel alias vindicant, antequam ad cessationem hujusmodi quoquo modo procedant, in instrumento publico vel patentibus litteris sigillorum suorum, aut alterius authentici munimine roboratis, cessationis ipsius causam exprimant, et illud vel illas, ei contra quem cessare intendunt, assignent. Sciturì, quod si hoc praetermisso cessaverint, vel causa, quam expresserint, non fuerit inventa canonica, omnia, quae de quibuscumque proventibus illius ecclesiae, in qua cessatum fuerit, cessationis tempore perceperunt, restituent. Illa vero quae pro eodem tempore debent eisdem, nullo modo percipient, sed ipsi ecclesiae cedere, ac nihilominus ei, contra quem cessaverant, de damnis et injuriis satisfacere tenebuntur. Si autem causa eadem canonica fuerit judicata, is, qui occasionem cessationi dederat, ad omne interesse dictis canonicis et ecclesiae, cui debitum officium ejus est culpa subtractum, ad certam quantitatem taxandam, et in divini cultus augmentum convertendam, superioris arbitrio condemnetur. Ceterum detestabilem abusum horrendae indevotionis illorum, qui crucis, beatae Virginis aliorumve sanctorum imagines, seu statuas, irreverenti ausu tractantes, eas in aggravationem cessationis hujusmodi prosternunt in terram, urticis, spinisque supponunt, penitus reprobantes; aliquid tale de cetero fieri districtius prohibemus. Statuentes, ut in eos, qui contrafecerint, ultrix procedat dura sententia, quae delinquentes sic graviter puniat, quod alios a similium praesumptione compescat. (C. 2, VI°, De off. ordinarii, I, 16.)

18. Ordinarii locorum subditos suos plures dignitates, vel ecclesias, quibus animarum cura imminet, obtinentes, seu personatum aut dignitatem, cum alio beneficio, cui cura similis est annexa, districte compellant, dispensationes, auctoritate quarum hujusmodi ecclesias, personatus, seu dignitates, canonice tenere se asserunt, infra tempus, pro facti qualitate ipsorum ordinariorum moderandum arbitrio exhibere. Quod si forte justo impedimento cessante, nullam dispensationem infra idem tempus contigerit exhiberi; ecclesiae beneficia, personatus, seu dignitates, quae sine dispensatione aliqua eo ipso illicite detineri constabit, per eos, ad quos eorumdem collatio pertinet, libere personis idoneis conferantur. Ceterum si dispensatio exhibita sufficiens evidenter appareat, exhibens nequaquam in beneficiis hujusmodi, quae canonice obtinet, molestetur. Provideat tamen ordinarius, qualiter nec animarum cura in eisdem ecclesiis, personatibus, seu dignitatibus negligatur, nec beneficia ipsa debitis obsequiis defraudentur. Si vero de dispensationis exhibitae sufficientia dubitetur, super hoc erit ad sedem apostolicam recurrendum, cujus est aestimare quem modum sui beneficii esse velit. In conferendis insuper personatibus, dignitatibus et aliis beneficiis curam animarum habentibus annexam, iidem ordinarii diligentiam illam observent, ut personatum, dignitatem, vel aliud beneficium similem curam habens, alicui plura similia obtinenti non ante conferre praesumant, quam eis super obtentis dispensatio evidenter sufficiens ostendatur. Qua etiam ostensa, ita demum ad collationem procedi volumus, si appareat per eamdem, quod is cui est collatio facienda, hujusmodi personatum, dignitatem, vel beneficium retinere licite valeat cum obtentis, vel si ea, quae sic obtinet, libere ac sponte resignet. Aliter autem de personatibus, dignitatibus, et beneficiis talibus facta collatio nullius penitus sit momenti. (C. 3, VI°, De off. ordinarii, I, 16.)

19. Properandum nobis visum est, ut malitiosis litium protractionibus occurratur, quod speramus efficaciter provenire, si eos qui circa judicia ministerium exhibent, ad id congruis remediis dirigamus. Cum igitur ea quae ad hoc salubriter fuerant circa patronos causarum legali sanctione provisa, desuetudine abolita videantur; nos sanctionem eamdem praesentis redivivae constitutionis suffragio, cum aliqua tamen adjectione, necnon et moderatione, renovantes, statuimus, ut omnes et singuli advocationis officium in foro ecclesiastico, sive apud sedem apostolicam, sive alibi, exercentes, praestent, tactis sacrosanctis evangeliis, juramentum, quod in omnibus causis ecclesiasticis et aliis in eodem foro tractandis, quarum assumpserunt patrocinium, vel assument, omni virtute sua, omnique ope, id quod verum et justum existimaverint, suis clientulis inferre procurent; nihil in hoc studii, quod eis sit possibile, relinquentes, quodque in quacumque parte judicii eis innotuerit, improbam fore causam, quam in sua fide receperant, amplius non patrocinabuntur eidem, imo ab ea omnino recedent, a communione illius se penitus separantes; reliquis, quae circa haec sunt in eadem sanctione statuta, inviolabiliter observandis. Procuratores insuper juramento simili adstringantur. Hujusmodi quoque juramentum tam advocati, quam procuratores in foro, in quo idem assumpserunt officium, teneantur annis singulis iterare. Qui vero ad eamdem sedem veniunt, vel ad curiam cujuslibet ecclesiastici judicis, in qua nondum tale praestiterant juramentum, accedunt, in aliquibus singularibus causis patrocinium, vel procurationis ministerium praestituri, praestent in singulis causis eisdem mota controversia simile juramentum. Advocati autem, et procuratores qui juxta praedictam formam jurare noluerint, executionem officiorum suorum, hujusmodi voluntate durante, sibi noverint interdictam. Quod si juramentum praestitum violare praesumpserint, praeter reatum perjurii, consiliarii etiam, qui scienter iniquam causam foverint, divinam et nostram maledictionem incurrant, a qua non aliter liberentur, nisi duplum ejus restituerint, quod pro tam iniquis advocatione, procuratione, vel consilio receperunt; ac nihilominus de damnis, quae per iniqua hujusmodi ministeria partibus irrogarunt, illis satisfacere teneantur. Ceterum, ne cupiditatis ordor aliquos ad haec salubria statuta contemnenda praecipitet, districtius inhibemus, ne aliquis advocatus in quacumque causa ultra viginti, procurator vero ultra duodecim libras Turonenses recipere salarii nomine, vel etiam sub palmarii colore praesumat. Qui autem ultra receperint, nequaquam dominium eorum, quae praedictam quantitatem excedunt, acquirant; sed ad restitutionem integram teneantur illorum. Ita quod nihil horum, ad quae restituenda eos teneri praemisimus, in fraudem praesentis constitutionis remitti possit eisdem. Et insuper advocati constitutionem praesentem taliter violantes, ab advocationis officio triennio suspendantur. Procuratores vero ex tunc sibi sciant cujuslibet procurationis in judicio licentiam denegatum.

20. Absolutionis beneficium ab excommunicationis sententia, vel quamcumque revocationem ipsius, aut suspensionis, seu etiam interdicti, per vim vel metum extortam, praesentis constitutionis auctoritate omnino viribus vacuamus. Ne autem sine vindicta violentiae crescat audacia, eos, qui absolutionem, sive revocationem hujusmodi, vi vel metu extorserint, excommunicationis sententiae decernimus subjacere. (C.un., VI°, De iis quae vi . . . , I, 20.)

21. Statutum felicis recordationis Clementis papae IV praedecessoris nostri de dignitatibus et beneficiis in curia Romana vacantibus nequaquam per alium quam per Romanum pontificem conferendis, decrevimus taliter moderandum, ut ii, ad quos eorumdem beneficiorum et dignitatum spectat collatio, statuto non obstante praedicto, demum post mensem a die quo dignitates, seu beneficia ipsa vacaverint, numerandum, ea conferre valeant tantummodo per seipsos, vel, ipsis agentibus in remotis, per suos

vicarios generales in eorum dioecesibus existentes, quibus id canonice sit commissum. (C. 3, VI°, De praebend., III, 4.)

22. Hoc consultissimo prohibemus edicto, universos et singulos praelatos ecclesias sibi commissas, bona immobilia, seu jura ipsarum, laicis submittere, subjicere, seu supponere, absque capituli sui consensu et sedis apostolicae licentia speciali, non concedendo bona ipsa vel jura in emphyteusim, seu alias alienando, in forma et casibus a jure permissis; sed constituendo, vel recognoscendo, seu profitendo ab illis ea tamquam a superioribus se tenere, seu ab ipsis eadem advocando, prout in quibusdam partibus vulgariter dicitur *Avoher*, vel ipsos patronos, sive advocatos ecclesiarum, seu bonorum ipsorum perpetuo, aut ad tempus non modicum, statuendo. Contractus autem omnes, etiam juramenti, poenae vel alterius cujuslibet firmitatis adjectione vallatos, quos de talibus alienationibus, sine hujusmodi licentia et consensu contigerit celebrari, et quicquid ex eis secutum fuerit, decernimus adeo viribus omnino carere, ut nec jus aliquod tribuant, nec praescribendi etiam causam pariant. Et nihilominus praelatos, qui secus egerint, ipso facto officio et administratione, clericos etiam, qui scientes contra inhibitionem praedictam aliquid esse praesumptum, id superiori denunciare neglexerint, a perceptione beneficiorum, quae in ecclesia sic gravata obtinent, triennio statuimus esse suspensos. Laici vero qui praelatos, vel capitula ecclesiarum, seu alias personas ecclesiasticas, ad submissiones hujusmodi faciendas hactenus compulerunt, nisi post competentem monitionem, remissa submissione, quam per vim vel metum exegerant, ecclesias et bona ecclesiastica eis submissa taliter in sua libertate dimittant; illi etiam, qui de cetero praelatos vel personas easdem ad talia facienda compulerint, cujuscumque sint conditionis aut status, excommunicationis sint sententia innodati. Ex contractibus praeterea super praemissis, hujusmodi licentia et consensu intervenientibus hactenus initis, vel quos in futurum iniri continget, seu occasione illorum, laici, ultra id quod eis ex natura contractuum ipsorum, vel adhibita in illis lege permittitur, aliquid non usurpent. Qui vero secus egerint, nisi legitime moniti, ab hujusmodi usurpatione destiterint, restituendo etiam quae taliter usurparunt, eo ipso sententiam excommunicationis incurrant; et ex tunc ad supponendum terram ipsorum, si opus fuerit, ecclesiastico interdicto libere procedatur. (C. 2, VI°, De rebus eccl. non alienand., III, 9.)

23. Religionum diversitatem nimiam, ne confusionem induceret, generale concilium consulta prohibitione vetuit. Sed quia non solum importuna petentium inhiatio, illarum postmodum multiplicationem extorsit, verum etiam aliquorum praesumptuosa temeritas diversorum ordinum, praecipue mendicantium, quorum nondum approbationis meruere principium, effrenatam quasi multitudinem adinvenit, repetita constitutione districtius inhibemus, ne aliquis de cetero novum ordinem aut religionem inveniat, vel habitum novae religionis assumat. Cunctas affatim religiones, et ordines mendicantes post dictum concilium adinventos, qui nullam confirmationem sedis apostolicae meruerunt, perpetuae prohibitioni subjicimus, et quatenus processerant, revocamus. Confirmatos autem per sedem eamdem post tamen idem consilium institutos, quibus ad congruam sustentationem reditus, aut possessiones habere professio sive regula, vel constitutiones quaelibet interdicunt, sed per quaestum publicum tribuere victum solet incerta mendicitas, modo subsistere decernimus infrascripto: ut professoribus eorumdem ordinum ita liceat in illis remanere, si velint, quod nullum deinceps ad eorum professionem admittant, nec de novo domum aut aliquem locum acquirant, nec domos, seu loca, quae habent, alienare valeant, sine sedis ejusdem licentia speciali. Nos enim ea dispositioni sedis apostolicae reservamus in terrae sanctae subsidium, vel pauperum, aut alios pios usus per locorum ordinarios, vel eos, quibus sedes ipsa commiserit, con-

vertenda. Si vero secus praesumptum fuerit, nec personarum receptio, nec domorum vel locorum acquisitio, aut ipsorum, ceterorumque bonorum alienatio valeat; et nihilominus contrarium facientes sententiam excommunicationis incurrant. Personis quoque ipsorum ordinum omnino interdicimus quoad extraneos praedicationis et audiendae confessionis officium, aut etiam sepulturam. Sane ad praedicatorum et minorum ordines, quos evidens ex eis utilitas ecclesiae universali proveniens perhibet approbatos, praesentem non patimur constitutionem extendi. Ceterum carmelitarum et eremitarum S. Augustini ordines, quorum institutio dictum concilium generale praecessit, in suo statu manere concedimus, donec de ipsis fuerit aliter ordinatum. Intendimus siquidem tam de illis, quam de reliquis etiam non mendicantibus ordinibus, prout animarum saluti, et eorum statui expedire viderimus, providere. Ad haec personis ordinum, ad quos constitutio praesens extenditur, transeundi ad reliquos ordines approbatos licentiam concedimus generalem; ita quod nullus ordo ad alium, vel conventus ad conventum, se ac loca sua totaliter transferat, sedis ejusdem permissione super hoc specialiter non obtenta. (C.un., VI°, De relig. domibus, III, 17.)

24. Exigit perversorum audacia, ut non simus sola delictorum prohibitione contenti, sed poenam etiam delinquentibus imponamus. Constitutionem itaque felicis recordationis Innocentii papae IV praedecessoris nostri editam super non recipiendis in pecunia procurationibus, et super receptione munerum, visitantibus, eorumque familiis interdicta, quam multorum fertur temeritas praeterire, volentes inviolabiliter observari, eam decrevimus poenae adjectione juvandam; statuentes, ut universi et singuli, qui ob procurationem sibi ratione visitationis debitam, exigere pecuniam, vel etiam a volente recipere, aut alias constitutionem ipsam, recipiendo munera, sive visitationis officio non impenso, procurationem in victualibus, aut aliquid aliud procurationis occasione, violare praesumpserint, duplum ejus, quod receperint, ecclesiae a qua id receptum fuerit, infra mensem reddere teneantur; alioquin ex tunc patriarchae, archiepiscopi, episcopi, duplum ipsum ultra praedictum tempus restituere differentes, ingressum sibi ecclesiae interdictum sentiant. Inferiores vero ab officio et beneficio noverint se suspensos, quousque de duplo hujusmodi gravatis ecclesiis plenariam satisfactionem impendant. Nulla eis in hoc dantium remissione, liberaliter seu gratia valitura. (C.2, VI°, De cens., III, 20.)

25. Decet domum Domini sanctitudo, decet, ut cujus in pace factus est locus ejus, sit cultus cum debita veneratione pacificus. Sit itaque ad ecclesias humilis et devotus ingressus. Sit in eis quieta conversatio, Deo grata, inspicientibus placida, quae considerantes non solum instruat, sed reficiat. Convenientes ibidem, nomen illud quod est super omne nomen, a quo aliud sub caelo non est datum hominibus, in quo salvos fieri credentes oporteat, nomen videlicet Jesu Christi, qui salvum fecit populum suum a peccatis eorum, exhibitione reverentiae specialis attollant, et quod generaliter scribitur, ut *in nomine Jesu omne genuflectatur,* singuli singulariter in se ipsis implentes, praecipue dum aguntur missarum sacra mysteria, gloriosum illud nomen, quandocumque recolitur, flectant genua cordis sui, quod vel capitis inclinatione testentur. Attendantur in locis eisdem intentis praecordiis sacra solemnia, devotis animis orationibus intendantur. Nullus in locis eisdem, in quibus cum pace et quiete vota convenit celebrari, seditionem excitet, conclamationem moveat, impetumve committat. Cessent in illis universitatum et societatum quarumlibet consilia, conciones et publica parlamenta. Cessent vana, et multo fortius foeda et profana colloquia. Cessent confabulationes quaelibet. Sint postremo quaecumque alia divinum turbare possunt officium, aut oculos divinae majestatis offendere, ab ipsis prorsus extranea; ne ubi peccatorum est venia

postulanda, ibi peccandi detur occasio, aut deprehendantur peccata committi. Cessent in ecclesiis earumque coemeteriis negotiationes, et praecipue nundinarum, ac fori cujusque tumultus. Omnis in eis saecularium judiciorum strepitus conquiescat. Nulla inibi causa per laicos, criminalis maxime, agitetur. Sint loca eadem a laicorum cognitionibus aliena. Ordinarii locorum haec faciant observari, suadenda suadeant, interdicta hujus canonis auctoritate compescant; ad haec alios etiam in ecclesiis ipsis magis assiduos, et ad praemissa idoneos deputando. Et nihilominus processus judicium saecularium, ac specialiter sententiae prolatae in eisdem locis, omni careant robore firmitatis. Qui vero praemissas inhibitiones animo petulanti contempserint, praeter processum ordinariorum, et deputandorum ab ipsis, divinae ultionis et nostrae poterunt acrimoniam formidare, donec suum confessi reatum, a similibus firmato proposito deliberaverint abstinere. (C. 2, VI°, De immunitate, III, 23.)

26. Usurarum voraginem, quae animas devorat et facultates exhaurit, compescere cupientes, constitutionem Lateranensis concilii contra usurarios editam, sub divinae maledictionis interminatione praecipimus inviolabiliter observari. Et quia quo minor foenetatoribus aderit foenerandi commoditas, eo magis adimetur foenus exercendi libertas; hac generali constitutione sancimus, ut nec collegium, nec alia universitas, vel singularis persona, cujuscumque sit dignitatis, conditionis, aut status, alienigenas et alios non oriundos de terris ipsorum, publice pecuniam foenebrem exercentes, aut exercere volentes ad hoc domos in terris suis conducere, vel conductas habere, aut alias habitare permittant; sed hujusmodi usurarios manifestos omnes infra tres menses de terris suis expellant, nunquam aliquos tales de cetero admissuri. Nemo illis ad foenus exercendum domos locet, vel sub alio titulo quocumque concedat. Qui vero contrarium fecerint, si personae fuerint ecclesiasticae, patriarchae, archiepiscopi, episcopi, suspensionis; minores vero personae singulares, excommunicationis; collegium autem, seu alia universitas, interdicti sententiam ipso facto se noverint incursuros. Quam si per mensem animo sustinuerint indurato, terrae ipsorum, quamdiu in eis iidem usurarii commorantur, ex tunc ecclesiastico subjaceant interdicto. Ceterum si laici fuerint, per suos ordinarios ab hujusmodi excessu, omni privilegio cessante, per censuram ecclesiasticam compescantur. (C 1, VI°, De usuris, V, 5.)

27. Quamquam usurarii manifesti de usuris, quas receperint, satisfieri expressa quantitate, vel indistincte in ultima infirmitate mandaverint; nihilominus tamen eis sepultura ecclesiastica denegetur, donec vel de usuris ipsis fuerit, prout patiuntur facultates eorum, plenarie satisfactum, vel illis, quibus est facienda restitutio, si praesto sint ipsi, aut aliis qui eis possint acquirere, vel eis absentibus loci ordinario, aut ejus vices gerenti, sive rectori parochiae in qua testator habitat, coram aliquibus fide dignis de ipsa parochia; quibus quidem ordinario, vicario et rectori, praedicto modo cautionem hujusmodi, eorum nomine, liceat praesentis constitutionis auctoritate recipere; ita quod illis proinde actio acquiratur, aut servo publico de ipsius ordinarii mandato idoneo de restitutione facienda sit cautum. Ceterum si receptarum usurarum sit quantitas manifesta, illam semper in cautione praedicta exprimi volumus, alioquin aliam recipientis cautionem hujusmodi arbitrio moderandam. Ipse tamen scienter non minorem, quam verisimiliter creditur, moderetur; et si secus fecerit, ad satisfactionem residui teneatur. Omnes autem religiosos et alios qui manifestos usurarios contra praesentis sanctionis formam ad ecclesiasticam admittere ausi fuerint sepulturam, poenae in Lateranensi concilio contra usurarios promulgatae statuimus subjacere. Nullus manifestorum usurariorum testamentis intersit, aut eos ad confessionem admittat, sive ipsos absolvat, nisi de usuris satisfecerint, vel de satisfaciendo pro suarum viribus facultatum

praestent, ut praemittitur, idoneam cautionem. Testamenta quoque manifestorum usurariorum aliter facta non valeant, sed sint irrita ipso jure. (C. 2, VI°, De usuris, V, 5.)

28. Etsi pignorationes, quas vulgaris elocutio represalias nominat, in quibus alius pro alio praegravatur, tamquam graves legibus et aequitati naturali contrariae, civili sint constitutione prohibitae; ut tamen earum prohibitio in personis ecclesiasticis tanto amplius timeatur, quanto in illis specialius inhibentur, eas concedi contra personas praedictas, seu bona ipsorum, aut quantumcumque generaliter, praetextu cujusvis consuetudinis, quam potius reputamus abusum, forte concessas, ad illas extendi praesenti decreto districtius inhibemus. Illi autem qui contra fecerint, adversus personas easdem, pignorationes, seu represalias concedendo, vel extendendo ad eas, nisi praesumptionem hujusmodi revocaverint, a concessionis vel extensionis tempore infra mensem, si personae singulares fuerint, sententiam excommunicationis incurrant; si vero universitas, ecclesiastico subjaceat interdicto. (C. un., VI°, De injuriis, V, 8.)

29. Constitutionem felicis recordationis Innocentii papae IV praedecessoris nostri, quae prohibet participantes excommunicatis ea participatione, quae solam minorem excommunicationem inducit, monitione canonica non praemissa, majori excommunicatione ligari, decernens promulgatam aliter excommunicationis sententiam non tenere; ad tollendam omnem ambiguitatis scrupulum declarantes, decernimus, ita demum monitionem esse canonicam in hoc casu, si aliis rite servatis, eos, qui monentur, exprimat nominatim. Statuimus quoque, ut inter monitiones, quas, ut canonice promulgetur excommunicationis sententia, statuunt jura praemitti, judices sive monitionibus tribus utantur, sive una pro omnibus, observent aliquorum dierum competentia intervalla, nisi facti necessitas ea suaserit aliter moderanda. (C. 9, VI°, De sentent. excomm., V, 11.)

30. Praesenti generali declaramus edicto, beneficium relaxationis ad cautelam, quoad interdicti sententias in civitates, castra, vel quaelibet alia loca, sive terras aliquas, generaliter promulgatas, locum aliquatenus non habere. (C. 10, VI°, De sentent. excomm., V, 11.)

31. Quicumque pro eo, quod in reges, principes, barones, nobiles, ballivos, vel quoscumque ministros eorum, aut quoscumque alios, excommunicationis, suspensionis, seu interdicti sententia fuerit promulgata, licentiam alicui dederint occidendi, capiendi, seu alias in personis, aut bonis suis, vel suorum, gravandi eos qui tales sententias protulerunt, sive quorum sunt occasione prolatae, vel easdem sententias observantes, seu taliter excommunicatis communicare nolentes, nisi licentiam ipsam re integra revocaverint, vel si ad bonorum captionem occasione ipsius licentiae sit processum, nisi bona ipsa sint infra octo dierum spatium restituta, aut satisfactio pro ipsis impensa, in excommunicationis sententiam incidant ipso facto. Eadem quoque sint sententia innodati omnes, qui ausi fuerint praedicta licentia data uti, vel aliquid praemissorum, ad quae committenda licentiam dari prohibuimus, alias committere suo motu. Qui autem in eadem sententia permanserint duorum mensium spatio, ex tunc ab ea non possint, nisi per sedem apostolicam, absolutionis beneficium obtinere. (C. 11, VI°, De sentent. excomm., V, 11.) [2]

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[2] Textus latinus constitutionis "Zelus fidei" de expeditione pro terra sancta liberanda, apud Finke, *Konzilienstudien zur Gesch. d. 13. Jahrh.*, 113–16, habetur.

CANONES CONCILII VIENNENSIS (OECUMEN. XV)

ANNIS 1311–12 HABITI[1]

1. Fidei catholicae fundamento, praeter quod teste apostolo nemo potest aliud ponere, firmiter inhaerentes, aperte cum sancta matre ecclesia confitemur, unigenitum Dei Filium in his omnibus, in quibus Deus Pater exsistit, una cum Patre aeternaliter subsistentem, partes nostrae naturae simul unitas (ex quibus ipse in se verus Deus exsistens fieret verus homo), humanum videlicet corpus passibile, et animam intellectivam seu rationalem, ipsum corpus vere per se et essentialiter informantem, assumpsisse ex tempore in virginali thalamo, ad unitatem suae hypostasis et personae. Et quod in hac assumpta natura ipsum Dei verbum pro omnium operanda salute non solum affigi cruci et in ea mori voluit, sed etiam, emisso jam spiritu, perforari lancea sustinuit latus suum, ut, exinde profluentibus undis aquae et sanguinis, formaretur unica et immaculata ac virgo sancta mater ecclesia, conjux Christi, sicut de latere primi hominis soporati Eva sibi in conjugium est formata, ut sic certae figurae primi et veteris Adae, qui secundum apostolum est forma futuri, in nostro novissimo Adam, id est Christo, veritas responderet. Haec est, inquam, veritas, illius praegrandis aquilae vallata testimonio, quam propheta vidit Ezechiel animalibus ceteris evangelicis transvolantem, beati Joannis videlicet apostoli et evangelistae, qui, sacramenti hujus rem gestam narrans et ordinem, in evangelio suo dixit: "Ad Jesum autem quum venissent, ut viderunt eum jam mortuum, non fregerunt ejus crura, sed unus militum lancea latus ejus aperuit, et continuo exivit sanguis et aqua. Et qui vidit, testimonium perhibuit, et verum est testimonium ejus, et ille scit, quia vera dicit, ut et vos credatis." Nos igitur, ad tam praeclarum testimonium ac sanctorum patrum et doctorum communem sententiam apostolicae considerationis (ad quam duntaxat haec declarare pertinet) aciem convertentes, sacro approbante concilio declaramus, praedictum apostolum et evangelistam Joannem rectum in praemissis factae rei ordinem tenuisse, narrando quod Christo jam mortuo unus militum lancea latus ejus aperuit.

Porro doctrinam omnem seu positionem, temere asserentem aut vertentem in dubium quod substantia animae rationalis seu intellectivae vere ac per se humani corporis non sit forma, velut erroneam ac veritati catholicae fidei inimicam, praedicto sacro approbante concilio, reprobamus, diffinientes, ut cunctis nota sit fidei sincerae veritas, ac praecludatur universis erroribus aditus, ne subintrent, quod quisquis deinceps asserere, defendere seu tenere pertinaciter praesumpserit, quod anima rationalis seu intellectiva non sit forma corporis humani per se et essentialiter, tanquam haereticus sit censendus.

Ad hoc baptisma unicum baptizatos omnes in Christo regenerans est (sicut unus Deus ac fides unica), ab omnibus fideliter confitendum, quod celebratum in aqua in nomine Patris, et Filii, et Spiritus Sancti, credimus esse tam adultis quam parvulis communiter perfectum remedium ad salutem.

Verum, quia, quantum ad effectum baptismi in parvulis, reperiuntur doctores quidam theologi opiniones contrarias habuisse, quibusdam ex ipsis dicentibus, per virtutem baptismi parvulis quidem culpam remitti, sed gratiam non conferri, aliis e contra asse-

[1] Hefele-Leclercq, VI, 672–99.

rentibus, quod et culpa eisdem in baptismo remittitur, et virtutes ac informans gratia infunduntur quoad habitum, etsi non pro illo tempore quoad usum; nos autem, attendentes generalem efficaciam mortis Christi (quae per baptisma applicatur pariter omnibus baptizatis), opinionem secundam (quae dicit, tam parvulis quam adultis conferri in baptismo informantem gratiam et virtutes) tanquam probabiliorem, et dictis sanctorum ac doctorum modernorum theologiae magis consonam et concordem, sacro approbante concilio duximus eligendam. (C. 1, in Clem., De summa trinit., I, 1.)

2. Dudum a Bonifacio papa VIII praedecessore nostro infra scripta edita decretali, Benedictus papa XI praedecessor noster aliam illius revocatoriam promulgavit, quae quia, ut probavit effectus, nedum pacis ab auctore ipsius speratae fructum non attulit, quin immo discordiae, pro qua sedanda processerat, fomentum non modicum ministravit, nos eam omnino cassantes, aliam a praefato Bonifacio editam sacro instante et approbante concilio innovamus, subjicientes tenorem illius, qui dignoscitur esse talis:

"Bonifacius episcopus servus servorum Dei ad perpetuam rei memoriam.

Super cathedram praeeminentiae pastoralis divina disponente clementia constituti, etsi multis et arduis, quae in amplum Romanae curiae alveum undique confluunt quasi torrens, praegravemur negotiis, curis excitemur innumeris, cogitationibus plurimis distrahamur; circa id tamen ferventibus votis intendimus, vacamus instantius, ac operosae studium sollicitudinis impertimur, ut ad divini nominis gloriam, exaltationem catholicae fidei, et profectum fidelium animarum (praecisis radicitus dissidiorum.vepribus, et litigiorum anfractibus omnino subductis), inter ecclesiarum antistites ad curam et regimen gregis dominici deputatos, ceterasque personas, quas ordo clericalis includit, pacis tranquillitas vigeat, fervor caritatis exaestuet, invalescat concordiae unitas, animorum identitas perseveret. Scimus enim, et ex evidentia facti colligimus, quod non nisi in pacis tempore bene colitur pacis auctor, nec ignoramus quod dissensiones et scandala pravis actibus aditum praeparant, rancores et odia suscitant, et illicitis moribus ausum praebent. Ab olim siquidem inter praelatos et rectores, seu sacerdotes ac clericos parochialium ecclesiarum per diversas mundi provincias constitutos ex una parte, et praedicatorum et minorum ordinum fratres ex altera (pacis aemulo, satore zizaniae procurante), gravis et periculosa discordia exstitit suscitata super praedicationibus fidelium populis faciendis, eorum confessionibus audiendis, poenitentiis injungendis eisdem, et tumulandis defunctorum corporibus, qui apud fratrum ipsorum ecclesias sive loca noscuntur eligere sepulturam. Nos autem, pii patris more laudibili moleste ferentes incommoda filiorum, reducentes ad exactae considerationis examen, ac infra pectoris claustra sollicite revolventes, quam sit plena periculis, quam onusta dispendiis, quamque in divinae majestatis conspectu reddatur exosa discordia supra dicta, et propterea intendentes paternae sollicitudinis studio illam prorsus evellere, ac omnimode submovere, nullis unquam futuris temporibus favente Domino suscitandam, grandi quoque desiderio cupientes ut hujusmodi negotium, quod potissime insidet cordi nostro, finem salubrem et celerem per apostolicae solertiae studium consequatur, diligenti cum fratribus nostris deliberatione praehabita super eo, ad honorem Dei et exaltationem catholicae fidei, quietum statum partium praedictarum, ac salutis animarum fidelium incrementum, de ipsorum fratrum consilio auctoritate apostolica statuimus et ordinamus ut dictorum ordinum fratres in ecclesiis et locis eorum, ac in plateis communibus libere valeant clero et populo praedicare ac proponere verbum Dei, hora illa duntaxat excepta, in qua locorum praelati praedicare voluerint, vel coram se facere solemniter praedicare, in qua praedicare cessabunt, praeterquam si aliud de praelatorum ipsorum voluntate processerit ac licentia speciali. In studiis autem generalibus, ubi sermones ad clerum ex more fieri solent diebus illis, quibus praedicari solemniter consuevit, ad funera etiam mortuorum, et in festis specialibus sive peculiaribus eorum-

dem fratrum, possunt iidem fratres et liceat eis libere praedicare, nisi forte illa hora, qua solet ad clerum in praedictis locis Dei verbum proponi, episcopus vel praelatus superior clerum ad se generaliter convocaret, aut ex aliqua ratione vel causa urgente clerum ipsum duceret congregandum. In ecclesiis autem parochialibus fratres illi nullatenus audeant vel debeant praedicare, vel proponere verbum Dei, nisi fratres praedicti a parochialibus sacerdotibus invitati fuerint vel vocati, et de ipsorum beneplacito et assensu, seu petita licentia fuerit et obtenta, nisi episcopus vel praelatus superior per eosdem fratres praedicari mandaret. Statuimus etiam et ordinamus auctoritate praedicta, ut in singulis civitatibus et dioecesibus, in quibus loca fratrum ipsorum consistere dignoscuntur, vel in civitatibus et dioecesibus locis ipsis vicinis, in quibus loca hujusmodi non habentur, magistri, priores provinciales praedicatorum aut eorum vicarii generales, et provinciales ministri et custodes minorum ordinum praedictorum, ad praesentiam praelatorum eorumdem locorum se conferant per se vel per fratres, quos ad hoc idoneos fore putaverint, humiliter petituri, ut fratres, qui ad hoc electi fuerint, in eorum civitatibus et dioecesibus confessiones subditorum suorum confiteri sibi volentium audire libere valeant, et hujusmodi confitentibus (prout secundum Deum expedire cognoverint), poenitentias imponere salutares, atque eisdem absolutionis beneficium impendere de licentia, gratia et beneplacito eorumdem. As deinde praefati magistri, priores, provinciales et ministri ordinum praedictorum eligere studeant personas sufficientes, idoneas, vita probatas, discretas, modestas atque peritas ad tam salubre ministerium et officium exsequendum, quas sic ab ipsis electas repraesentent vel faciant praesentari praelatis, ut de eorum licentia, gratia et beneplacito in civitatibus et dioecesibus eorumdem hujusmodi personae sic electae confessiones confiteri sibi volentium audiant, imponant poenitentias salutares, et beneficium absolutionis in posterum impendant, prout superius est expressum, extra civitates et dioeceses, in quibus fuerint deputatae, per quas eas volumus et non per provincias deputari, confessiones nullatenus auditurae. Numerus autem personarum assumendarum ad hujusmodi officium exercendum, esse debet, prout universitas cleri et populi ac multitudo vel paucitas exigit eorumdem. Et si iidem praelati petitam licentiam confessionum hujusmodi audiendarum concesserint, illam praefati magistri, ministri et alii cum gratiarum recipiant actione, dictaeque personae sic electae commissum sibi officium exsequantur. Quod si forte jam dicti praelati quemquam ex dictis fratribus, praesentatis eisdem, ad hujusmodi officium nollent habere, vel non ducerent admittendum; eo amoto vel subtracto loco ipsius similiter eisdem praesentandus praelatis possit et debeat alius subrogari. Si vero iidem praelati praefatis fratribus, ad confessiones (ut praemittitur) audiendas electis, hujusmodi exhibere licentiam recusarint; nos ex tunc ipsis, ut confessiones sibi confiteri volentium libere liciteque audire valeant, et eisdem poenitentias imponere salutares, atque eisdem beneficium absolutionis impertiri, gratiose concedimus de plenitudine apostolicae potestatis. Per hujusmodi autem concessionem nequaquam intendimus personis seu fratribus ipsis, ad id taliter deputatis, potestatem in hoc impendere ampliorem quam in eo curatis vel parochialibus sacerdotibus est a jure concessa, nisi forsan eis ecclesiarum praelati uberiorem in hac parte gratiam specialiter ducerent faciendam. Hujusmodi quoque statuto et ordinationibus nostris adjicimus, ut fratres dictorum ordinum in ecclesiis vel locis suis ubilibet constitutis liberam (ut sequitur) habeant sepulturam, videlicet, quod omnes ad eam recipere valeant, qui sepeliri elegerint in locis et ecclesiis memoratis. Verum ne parochiales ecclesiae et ipsarum curati sive rectores, qui ministrare habent ecclesiastica sacramenta, quibus noscitur de jure competere, praedicare seu proponere verbum Dei, et confessiones audire fidelium, debitis et necessariis beneficiis defraudentur, quum operariis mercedis exhibitio debeatur; auctoritate apostolica constituimus et ordinamus eadem, ut dictorum ordinum fratres de obventionibus omnibus tam funeralibus quam quibuscumque et quomodocumque

relictis, distincte vel indistincte, ad quoscumque certos vel determinatos usus, de quibus etiam quarta sive canonica portio dari sive exigi non consuevit vel non debet de jure, nec non de datis vel qualitercumque donatis in morte seu mortis articulo in infirmitate donantis vel dantis, de qua decesserit, quomodocumque directe vel indirecte fratribus ipsis vel aliis pro eisdem, quartam partem (quam auctoritate apostolica taxamus et etiam limitamus), parochialibus sacerdotibus et ecclesiarum rectoribus seu curatis largiri integre teneantur, facturi et curaturi, quod nec alii, nec aliis, a quibus quarta hujusmodi minime deberetur, ad ipsorum fratrum utilitatem vel commodum hujusmodi fiant relicta, aut in eos taliter data vel donata procedant, seu quod in morte vel ab infirmis hujusmodi dandum vel donandum fratribus ipsis exsisteret, in eorumdem dantium vel donantium sanitate sibi dari vel donari procurent. In quibus per ipsos vitandis eorum intendimus conscientias onerare, ut, si (quod absit) per fratres ipsos dolo vel fraude quicquam in hac parte agi fortasse contigerit (praeter id quod eos propterea dictis sacerdotibus, rectoribus et curatis teneri volumus), etiam districta ratio in extremi judicii examine requiratur ab eis. Ultra portionem autem hujusmodi nihil valeant parochiales rectores, curati et praelati exigere supra dicti, neque illis dicti fratres amplius impendere sint adstricti, neque ad id a quoquam possint aliqualiter coerceri. Nos etenim (ut in cunctis aequaliter et pacifice favente Domino procedatur), universa privilegia, gratias, indulgentias, verbo seu scripto sub quacumque forma vel expressione seu conceptione verborum a nobis vel praedecessoribus nostris Romanis pontificibus cuicumque ordinum praedictorum concessa, nec non consuetudines, conventiones, statuta et pacta, in quantum sunt praemissis vel alicui praemissorum contraria, ea penitus revocamus, vacuamus, cassamus et irritamus, quin immo cassa, vacua et irrita nuntiamus, et decernimus nullius prorsus existere firmitatis. Ceterum universos ecclesiarum praelatos, cujuscumque praeeminentiae, status vel dignitatis existant, ac sacerdotes parochiales et curatos sive rectores praedictos, praesentium tenore rogamus et hortamur attente, nihilominusque eis districte praecipiendo mandamus, quatenus, pro divina et apostolicae sedis reverentia, praedictos ordines et professores eorum habentes affectu benevolo commendatos, fratribus ipsis non se difficiles, graves, duros aut asperos, sed potius favorabiles, propitios ac benignos piaque munificentia liberales se studeant exhibere, sic eos in praedicationis officio et propositionibus verbi Dei, ac in omnibus aliis supra dictis tanquam cooperatores eorum idoneos et laborum suorum participes prompta benignitate recipiant ac affectuose admittere non omittant, ut proinde illis aeternae beatitudinis praemium augeatur, et animarum salutis incrementa felicia procurentur. Nec ipsos lateat quod, si secus ab eis agi fortasse contigerit in hac parte, apostolicae sedis benignitas, quae ordines et professores eosdem ubere favore prosequitur et gerit in visceribus caritatis, contra eos non immerito turbaretur, nec eadem aequanimiter pati posset, quin super hoc provisionis opportunae remedium adhiberet, ipsosque nihilominus caelestis indignatio principis digna pro meritis rependentis, cujus obsequia fratrum ipsorum sedulitas curiosa prosequitur, minime praeteriret. (C. 2, in Clem., De sepult., III, 7.)

3. Ut professores cujusvis paupertatis ordinis eo libentius in qua vocati sunt vocatione persistere, transeuntesque ad non mendicantium ordinem in eodem conversari quietius studeant, quo in ipsis discordiarum et schismatum productiva ambitio reprimetur; sacro concilio approbante statuimus, mendicantes quoslibet qui ad non mendicantium ordines etiam auctoritate apostolica transibunt in posterum, quive hactenus transiverunt, quamvis nunc prioratus administrationes vel officia, aut curam animarum vel regimen quodcumque obtineant inibi, vocem aut locum in capitulo non habere, etiam si hoc sibi ab aliis libere concedatur, ad prioratus quoque administrationes aut quaecumque in antea non assumi officia, etiam tanquam vicarios seu ministros vel

locum aliorum tenentes, quodque animarum curam et regimen nec pro se possint, nec pro aliis exercere. Quicquid autem in contrarium attentatum fuerit, sit irritum ipso jure, quovis privilegio non obstante. Ad illorum autem mendicantium ordines, quos apostolica sedes eo modo subsistere voluit, ut eorum professoribus ita in illis remanere liceret, quod nullum ex tunc admitterent ad professionem eorum, quibusque concessit licentiam generalem ad approbatos alios ordines transeundi, praesentem nolumus constitutionem extendi. (C. 1, in Clem., De regularibus, III, 9.)

4. Attendentes quod, ubi gubernaculum disciplinae contemnitur, restat, ut religio naufragetur, providendum censuimus esse praecipue, ne per contemptum hujusmodi in his, quae se Christo voto celebri desponderunt, quicquam reperiatur incongruum, quod in regularis ponat honestatis gloria maculam, et divinam merito possit offendere majestatem. Hoc igitur, sacro approbante concilio, duximus statuendum, ut singula monialium monasteria per ordinarios, exempta videlicet, quae ita sedi apostolicae quod nulli alii subjecta noscuntur, apostolica, non exempta vero ordinaria auctoritate, ac exempta alia per alios, quibus subsunt, annis singulis debeant visitari. Visitatores autem hujusmodi sollicitudinis studium diligenter impendant, ut moniales ipsae (quarum nonnullas dolentes audivimus in subscriptis excedere) pannis sericis, variorum foderaturis, sandalitiis, comatis et cornutis crinibus, scacatis et virgatis caputiolis non utantur, non choreas, non festa saecularium prosequantur, non die noctuve per vicos et plateas incedant, aut voluptuosam alias vitam ducant, easque solertius retrahant ab insolentiis quibuslibet et mundi hujus illecebris, ac inducant easdem ad impendendum in monasteriis suis devotum et debitum virtutum Domino famulatum. Ad quae omnia observanda moniales easdem (non obstantibus exemptionibus et privilegiis quibuscumque, quibus tamen quoad alia nolumus praejudicium generari), per illos, de quibus supra dictum est, compelli jubemus remediis opportunis. Statuimus insuper ut quaevis ad regimen abbatiarum assumptae, in monasteriis, in quibus abbatissae sunt solitae benedici, infra annum a suae confirmationis tempore computandum, munus benedictionis suscipiant, alioquin a jure suo (nisi subsit causa rationabilis), prorsus se noverint cecidisse, per illos, ad quos id pertinet, provisione de abbatissis monasteriis ipsis canonice facienda. Illas quoque mulieres, quae vulgo dicuntur canonicae saeculares, et, ut saeculares canonici, vitam ducunt, non renunciantes proprio, nec professionem aliquam facientes, per locorum ordinarios, si exemptae non fuerint, sua, si vero exemptae fuerint, apostolica auctoritate praecipimus visitari, per hoc tamen non intendentes earum statum, regulam seu ordinem approbare. Ipsos autem visitatores notariis duobus, et personis duabus suae ecclesiae, quatuorque viris aliis honestis utique et maturis praecipimus in ea, quam visitando facient, inquisitione fore contentos. Si qui vero visitatores ipsos in praemissis impedire praesumpserint, seu aliquo praemissorum, nisi moniti resipiscant, ipso facto excommunicationis sententiam se noverint incursuros, privilegiis, statutis et consuetudinibus quibuslibet in contrarium minime valituris. (C. 2, in Clem., De statu monach., III, 10.)

5. Quum de quibusdam mulieribus, Beguinabus vulgariter nuncupatis (quae, quum nulli promittant obedientiam, nec propriis renuncient, neque profiteantur aliquam regulam approbatam, religione nequaquam exsistunt, quamquam habitum, qui Beguinarum dicitur, deferant, et adhaereant religiosis aliquibus, ad quos specialiter trahitur affectio earumdem), nobis fide digna relatione insinuatum exstiterit, quod earum aliquae, quasi perductae in mentis insaniam, de summa Trinitate ac divina essentia disputent et praedicent, ac circa fidei articulos et ecclesiastica sacramenta opiniones catholicae fidei contrarias introducant, et, multos super his decipientes simplices, eos

in errores diversos inducant, aliaque quam plura periculum animarum parientia sub quodam velamine sanctitatis faciant et committant; nos, tam ex his quam ex aliis, de ipsarum opinione sinistra frequenter auditis, eas merito suspectas habentes, statum earumdem, sacro approbante concilio, perpetuo duximus prohibendum et a Dei ecclesia penitus abolendum, eisdem et aliis mulieribus quibuscumque sub poena excommunicationis, quam in contrarium facientes incurrere volumus ipso facto, injungentes expresse, ne statum hujusmodi, dudum forte ab ipsis assumptum, quoquo modo sectentur ulterius, vel ipsum aliquatenus de novo assumant. Praedictis vero religiosis, per quos eaedem mulieres in hujusmodi Beguinagii statu foveri et ad ipsum suscipiendum induci dicuntur, sub simili excommunicationis poena, quam eo ipso, quod secus egerint, se noverint incursuros, districtius inhibemus, ne mulieres aliquas, praedictum statum (ut praemittitur) dudum assumptum sectantes, aut ipsum de novo forsitan assumentes quomodocumque admittant ipsis super eo sectando vel assumendo praebentes ullo modo consilium, auxilium vel favorem, nullo contra praemissa privilegio valituro. Sane per praedicta prohibere nequaquam intendimus quin, si fuerint fideles aliquae mulieres, quae promissa continentia vel etiam non promissa, honeste in suis conversantes hospitiis, poenitentiam agere voluerint et virtutum Domino in humilitatis spiritu deservire, hoc eisdem liceat, prout Dominus ipsis inspirabit. (C. 1, in Clem., De relig. domibus, III, 11.)

6. Ad nostrum, qui desideranter in votis gerimus ut fides catholica nostris prosperetur temporibus, et pravitas haeretica de finibus fidelium exstirpetur, non sine displicentia grandi pervenit auditum, quod secta quaedam abominabilis quorumdam hominum malignorum, qui Beguardi, et quarumdam infidelium mulierum, quae Beguinae vulgariter appellantur, in regno Alemanniae procurante satore malorum operum damnabiliter insurrexit, tenens et asserens doctrina sua sacrilega et perversa inferius designatos errores. Primo videlicet, quod homo in vita praesenti tantum et talem perfectionis gradum potest acquirere, quod reddetur penitus impeccabilis, et amplius in gratia proficere non valebit. Nam, ut dicunt, si quis semper posset proficere, posset aliquis Christo perfectior inveniri. Secundo, quod jejunare non oportet hominem, nec orare, postquam gradum perfectionis hujusmodi fuerit assecutus, quia tunc sensualitas est ita perfecte spiritui et rationi subjecta, quod homo potest libere corpori concedere quidquid placet. Tertio, quod illi, qui sunt in praedicto gradu perfectionis et spiritu libertatis, non sunt humanae subjecti obedientiae, nec ad aliqua praecepta ecclesiae obligantur, quia, ut asserunt, ubi spiritus Domini, ibi libertas. Quarto, quod homo potest ita finalem beatitudinem secundum omnem gradum perfectionis in praesenti assequi, sicut eam in vita obtinebit beata. Quinto, quod quaelibet intellectualis natura in se ipsa naturaliter est beata, quodque anima non indiget lumine gloriae, ipsam elevante ad Deum videndum, et eo beate fruendum. Sexto, quod se actibus exercere virtutum est hominis imperfecti, et perfecta anima licentiat a se virtutes. Septimo, quod mulieris osculum (quum ad hoc natura non inclinet) est mortale peccatum, actus autem carnalis, quum ad hoc natura inclinet, peccatum non est, maxime quum tentatur exercens. Octavo, quod in elevatione corporis Jesu Christi non debent assurgere, nec eidem reverentiam exhibere, asserentes quod esset imperfectionis eisdem, si a puritate et altitudine suae contemplationis tantum descenderent, quod circa ministerium seu sacramentum eucharistiae, aut circa passionem humanitatis Christi aliqua cogitarent. Nonnulla etiam alia sub simulata quadam sanctitatis specie dicunt, faciunt et committunt, quae oculos divinae majestatis offendunt, et grave in se continent periculum animarum. Quum autem ex debito commissi nobis officii hujusmodi sectam detestabilem et praemissos ipsius exsecrandos errores, ne propagentur ulterius, et per eos corda fidelium damnabiliter corrumpantur, exstirpare ab ecclesia catholica necessario habea-

mus; nos, sacro approbante concilio, sectam ipsam cum praemissis erroribus damnamus et reprobamus omnino, inhibentes districtius, ne quis ipsos de cetero teneat, approbet vel defendat. Eos autem, qui secus egerint, animadversione canonica decernimus puniendos. Porro, dioecesani et illarum partium inquisitores haereticae pravitatis, in quibus Beguardi et Beguinae hujusmodi commorantur, suum officium circa eos diligenter exerceant, inquirentes de vita et conversatione ipsorum, qualiterve sentiant de articulis fidei et ecclesiae sacramentis. In illos vero, quos culpabiles repererint, nisi abjuratis sponte praedictis erroribus poenituerint, et satisfactionem exhibuerint competentem, debitam exerceant ultionem. (C. 3, in Clem., De haeret., V, 3.)

7. Quia contingit interdum quod xenodochiorum, leprosariarum, eleemosynariarum seu hospitalium rectores, locorum ipsorum cura postposita, bona, res et jura ipsorum interdum ab occupatorum et usurpatorum manibus excutere negligunt, quin immo ea collabi et deperdi, domos et aedificia ruinis deformari permittunt, et, non attento quod loca ipsa ad hoc fundata et fidelium erogationibus dotata fuerunt, ut pauperes infectique lepra reciperentur inibi et ex proventibus sustentarentur illorum, id renuunt inhumaniter facere, proventus eosdem in usus suos damnabiliter convertentes, quum tamen ea, quae ad certum usum largitione sunt destinata fidelium, ad illum debeant, non ad alium (salva quidem sedis apostolicae auctoritate) converti; nos, incuriam et abusum hujusmodi detestantes, hoc sacro concilio approbante sancimus ut hi ad quos id de jure vel statuto in ipsorum fundatione locorum apposito, aut et consuetudine praescripta legitime, vel privilegio sedis apostolicae pertinet, loca ipsa studeant in praedictis omnibus salubriter reformare, ac occupata, deperdita et alienata indebite in statum reduci debitum faciant, et ad ipsarum miserabilium personarum receptionem et sustentationem debitam juxta facultates et proventus locorum ipsorum rectores praedictos compellere non omittant. In quo si forte commiserint negligentiam vel defectum, ordinariis locorum injungimus ut, etiamsi pia loca praedicta exemptionis privilegio munita consistant, per se ipsos vel alios impleant omnia praemissa et singula, et rectores eosdem utique non exemptos propria, exemptos vero et alios privilegiatos apostolica ad id auctoritate compellant, contradictores, cujuscumque status aut conditionis existant, ac praebentes eisdem circa praemissa consilium, auxilium vel favorem, per censuram ecclesiasticam et aliis juris remediis compescendo, nullam tamen per hoc exemptionibus seu privilegiis ipsis quoad alia praejudicium generando. Ut autem praemissa promptius observentur, nullus ex locis ipsis saecularibus clericis in beneficium conferatur, etiamsi de consuetudine (quam reprobamus penitus) hoc fuerit observatum, nisi in illorum fundatione secus constitutum fuerit, seu per electionem sit de rectore locis hujusmodi providendum. Sed eorum gubernatio viris providis, idoneis et boni testimonii committatur, qui sciant, velint et valeant loca ipsa, bona eorum ac jura utiliter regere, et eorum proventus et reditus in personarum usum miserabilium fideliter dispensare, et quos in usus alios bona praedicta convertere praesumptio verisimilis non exsistat, in quibus sub obtestatione divini judici illorum, ad quos dictorum locorum commissio pertinet, conscientias oneramus. Illi etiam, quibus dictorum locorum gubernatio seu administratio committetur, ad instar tutorum et curatorum juramentum praestare, ac de locorum ipsorum bonis inventaria conficere, et ordinariis seu aliis, quibus subsunt loca hujusmodi, vel deputandis ab eis, annis singulis de administratione sua teneantur reddere rationem. Quod si secus a quoquam fuerit attentatum, collationem, provisionem seu ordinationem ipsam carere decernimus omni robore firmitatis. Praemissa vero ad hospitalia militarium ordinum aut religiosorum etiam aliorum extendi minime volumus, quorum tamen hospitalium rectoribus in sanctae obedientiae virtute mandamus, ut in illis secundum suorum ordinum instituta et antiquas observantias providere pauperibus, et hospitalitatem debitam in illis tenere procurent, ad quod per superiores eorum arcta districtione cogan-

tur, statutis aut consuetudinibus quibuslibet non obstantibus in praemissis. Ceterum nostrae intentionis exsistit, quod, si qua sint hospitalia, altare vel altaria et coemeterium ab antiquo habentia, et presbyteros celebrantes et sacramenta ecclesiastica pauperibus ministrantes, seu si parochiales rectores consueverint in illis exercere praemissa, antiqua consuetudo servetur quoad exercenda et ministranda spiritualia supra dicta. (C.2, in Clem., De relig. domibus, III, 11.)

8. Ut constitutio quae ad ecclesiam aliquam quemvis etiam ad exemptorum praesentationem admitti, consuetudine non obstante contraria, prohibet, nisi praesentato de proventibus ejusdem ecclesiae talis coram dioecesano portio fuerit assignata, unde jura possit episcopalia solvere, et sustentationem habere congruam, sicut expedit, observetur, ipsam declarare ac quaedam adjicere consulta hujusmodi sacri concilii approbatione providimus, dioecesanis sub obtestatione divini judicii districtius inhibentes, ne praesentatum aliquem per quamcumque personam ecclesiasticam, jus praesentandi ad ecclesiam aliquam habentem, admittant, nisi intra certum terminum competentem, per dioecesanos ipsos praesentantibus praefigendum, ipsi praesentato fuerit coram eis, ut praescribitur, congrua de proventibus ecclesiae portio assignata. Quam si forsan iidem praesentantes intra terminum ipsum assignare neglexerint, ne factum eorum noceat praesentato, statuimus ut ex tunc dioecesani debeant praesentatum (nisi aliud canonicum obsistat) admittere et in poenam praesentantium ad dioecesanos ipsos potestas assignationis hujusmodi devolvatur. Praecipimus autem dioecesanis eisdem sub ipsius obtestatione divini judicii, ipsorumque conscientias oneramus, quod moderationem portionis ipsius debite faciant,, nec odio vel favore vel alias in pluri vel minori circa illam scienter excedant. Sane in prioratuum vel aliorum tam regularium quam saecularium locorum ecclesiis, in quibus religiosi vel alii, ad quos eorum reditus pertinere noscuntur, praedicta consuerverunt onera supportare, praemissa nullatenus observentur, sed onera omnia, quae ecclesiarum ipsarum perpetuis presbyteris aut vicariis incumberent, si dicta eis assignatio facta esset, religiosi et alii supra dicti plene subire, ac presbyteros seu vicarios ipsos decenter tractare, nec non sustentationem eis praestare sufficientem et congruam teneantur. Ad quae omnia integraliter adimplenda, et nihilominus ad observationem debitam assignationis per dioecesanum in casu alio (ut praemittitur) faciendae, religiosos praedictos et alios quoslibet a dioecesanis eisdem ecclesiastica volumus censura compelli, non obstantibus exemptionibus aut aliis quibuslibet privilegiis, consuetudinibus vel statutis, quae circa praemissa vel eorum aliquod religiosis ipsis aut aliis in nullo volumus suffragari. (C.1, in Clem., De jure patron., III, 12.)

9. Gravi nimirum turbatione movemur, quod ex nonnullorum rectorum negligentia, quae, dum spem impunitatis permittit, multam nutrire pestilentiam consuevit in subditis, plerique ecclesiarum ministri, modestia ordinis clericalis abjecta, dum offerre Deo sacrificium laudis, fructum labiorum suorum, in puritate conscientiae et animi devotione deberent, horas canonicas dicere seu psallere transcurrendo, syncopando, extranea quidem et plerumque vana, profana et inhonesta intermiscendo colloquia, tarde ad chorum conveniendo, seu ecclesiam ipsam absque rationabili causa ante finem officii exeundo frequenter, aves interdum portando, seu faciendo portari, canesque secum ducendo venaticos, ac, quasi nihil praetendentes de clericali militia, in corona, vestibus et tonsura divina etiam celebrare aut eis interesse nimis inde vote praesumunt. Nonnulli etiam tam clerici quam laici, praesertim in festorum certorum vigiliis, dum in ecclesiis deberent orationi insistere, non verentur in ipsis earumque coemeteriis choreas facere dissolutas et interdum canere cantilenas, ac multas insolentias perpetrare, ex quibus ecclesiarum et coemeteriorum violationes, inhonesta, variaque delicta quandoque se-

quuntur, et ecclesiasticum plerumque perturbatur officium in divinae majestatis offensam et adstantium scandalum populorum. In multis insuper ecclesiis cum vasis, vestimentis et ceteris ornamentis ad divinum cultum necessariis, indecentibus utique, pensatis earum facultatibus, deservitur. Ne igitur transgressiones invalescant hujusmodi, aliisque veniant in exemplum; sacri concilii approtione hoc fieri prohibentes, sancimus ut illi, ad quos id pertinet, et in eorum, si utque exempti non sint, negligentiam vel defectum, locorum ordinarii, si vero exempti fuerint aut alias circa hoc privilegiati, superiores ipsorum, omni negligentia vel incuria penitus relegata, circa reformanda praemissa et eorum singula corrigenda, nec non ut in cathedralibus, regularibus et collegiatis ecclesiis horis debitis devote psallatur, in aliis vero convenienter et debite celebretur divinum diurnum et nocturnum officium, si Dei et apostolicae sedis indignationem evitare voluerint, sollicitam curent diligentiam adhibere, contradictores per censuram ecclesiasticam (dummodo ad eos illam exercere pertineat), aliisque opportunis remediis compescendo, facientes, prout ad eos spectat in his et aliis, quae ad divinum cultum et morum reformationem pertinent, ac ecclesiarum et coemeteriorum respiciunt honestatem, sacrorum statuta canonum, ad quae scienda diligens curent adhibere studium, irrefragabiliter observari. (C. 1, in Clem., De celebr. miss., III, 14.)

10. Dignum prorsus et congruum arbitrantes quod clerici tam religiosi quam alii cardinalium sacrosanctae Romanae ecclesiae ac quorumcumque pontificum gratiam et communionem apostolicae sedis habentium commensales domestici, se possint ipsis in divinis officiis coaptare, ut illud, quod iidem cardinales seu pontifices dicent officium, licite dicere valeant, nec ad dicendum aliquod aliud teneantur, sacri approbatione concilii indulgemus. (C. 2, in Clem., De celebr. miss., III, 14.)

11. Inter sollicitudines nostris humeris incumbentes, perpeti cura revolvimus ut errantes in viam veritatis inducere, ipsosque lucrifacere Deo sua nobis cooperante gratia valeamus, hoc est, quod profecto desideranter exquirimus, ad id nostrae mentis sedulo destinamus affectum, ac circa illud diligenti studio et studiosa diligentia vigilamus. Non ambigimus autem, quin ad hujusmodi nostrum desiderium assequendum divinorum eloquiorum sit expositio congrua, ipsorumque fidelis praedicatio admodum opportuna. Sed nec ignoramus quin et haec promi noscantur inaniter vacuaque redire, si auribus linguam loquentis ignorantium proferantur. Ideoque illius, cujus vicem in terris, licet immeriti, gerimus, imitantes exemplum, qui ituros per universum mundum ad evangelizandum apostolos in omni linguarum genere fore voluit eruditos viris catholicis notitiam linguarum habentibus, quibus utuntur infideles praecipue, abundare sanctam affectamus ecclesiam, qui infideles ipsos sciant et valeant sacris institutis instruere, christicolarumque collegio per doctrinam christianae fidei ac susceptionem sacri baptismatis aggregare. Ut igitur peritia linguarum hujusmodi possit habiliter per instructionis efficaciam obtineri; hoc sacro approbante concilio scholas in subscriptarum linguarum generibus, ubicumque Romanam curiam residere contigerit, nec non in Parisiensi et Oxoniensi, Bononiensi et Salamantino studiis providimus erigendas, statuentes ut in quolibet locorum ipsorum teneantur viri catholici, sufficientem habentes Hebraicae, Grecae, Arabicae et Chaldeae linguarum notitiam, duo videlicet uniuscujusque linguae periti, qui scholas regant inibi, et libros de linguis ipsis in latinum fideliter transferentes, alios linguas ipsas sollicite doceant, earumque peritiam studiosa in illos instructione transfundant, ut instructi et edocti sufficienter in linguis hujusmodi fructum speratum possint Deo auctore producere, fidem propagaturi salubriter in ipsos populos infideles. Quibus equidem in Romana curia legentibus per sedem apostolicam, in studiis vero Parisiensi per regem Franciae, in Oxoniensi Angliae, Scotiae, Hiberniae ac Waliae, in

Bononiensi per Italiae, in Salamantino per Hispaniae praelatos, monasteria, capitula, conventus, collegia exempta et non exempta, et ecclesiarum rectores in stipendiis competentibus et sumptibus volumus provideri, contributionis onere singulis juxta facultatum exigentiam imponendo, privilegiis et exemptionibus quibuscumque contraiis nequaquam obstantibus, quibus tamen nolumus quoad alia praejudicium generari. (C.1, in Clem., De magistris, V, 1.)

12. Cedit quidem in offensam divini nominis et opprobrium fidei christianae, quod in quibusdam mundi partibus principibus christianis subjectis, in quibus interdum seorsum, interdum vero permixtum cum christianis habitant Sarraceni, sacerdotes eorum, Zabazala vulgariter nuncupati, in templis seu mesquitis suis, ad quae iidem Sarraceni conveniunt, ut ibidem adorent perfidum Machometum, diebus singulis, certis horis in loco aliquo eminenti ejusdem Machometi nomen, christianis et Sarracenis audientibus, alta voce invocant et extollunt, ac ibidem verba quaedam in illius honorem publice profitentur; ad locum insuper, ubi olim quidam sepultus exstitit Sarracenus, quem ut sanctum Sarraceni alii venerantur et colunt, magna Sarracenorum earumdem partium et etiam aliarum confluit publice multitudo, ex quibus nostrae fidei non modicum detrahitur, et grave in cordibus fidelium scandalum generatur. Quum autem haec in divinae majestatis displicentia non sint ullatenus toleranda; sacro approbante concilio, ipsa in terris christianorum districtius fieri deinceps inhibemus, universis et singulis principibus catholicis, sub quorum dominio dicti Sarraceni morantur et fiunt praedicta, sub obtestatione divini judicii obnoxius injungentes, quatenus ipsi, tanquam veri catholici et christianae fidei seduli zelatores, opprobrium, quod tam ipsis quam ceteris christicolis per praemissa ingeritur, debita consideratione pensantes, ipsum, ut proinde aeternae beatitudinis praemium assequantur, de terris suis omnino auferant, et a suis subditis auferri procurent, inhibendo expresse, ne praefata invocatio seu professio nominis ipsius sacrilegi Mahometi publice, aut peregrinatio praelibata ab aliquo in eorum exsistente dominio audeat attentari de cetero vel quomodolibet sustineri. Hi vero, qui secus praesumpserint, taliter ob divinam reverentiam castigentur ab ipsis, quod alii, eorum exemplo perterriti, a praesumptione simili arceantur. (C.un., in Clem., De Jud. et Sarrac., V, 2.)

13. Multorum querela sedis apostolicae pulsavit auditum, quod nonnulli inquisitores, per sedem eamdem contra pravitatem haereticam deputati, metas sibi traditas excedentes sic interdum extendunt suae potestatis officium, ut, quod in augmentum fidei per circumspectam ejusdem sedis vigilantiam salubriter est provisum, dum sub pietatis specie gravantur innoxii, cedat in fidelium detrimentum.

Propter quod ad Dei gloriam et augmentum ejusdem fidei, ut negotium inquisitionis hujusmodi eo prosperetur felicius, quo deinceps ejusdem labis indago solennius, diligentius et cautius peragetur, ipsum tam per dioecesanos episcopos, quam per inquisitores a sede apostolica deputatos, omni carnali amore, odio vel timore, ac cujuslibet commodi temporalis affectione semotis decernimus exerceri, sic, quod quilibet de praedictis sine alio citare possit, et arrestare sive capere, ac tutae custodiae mancipare, ponendo etiam in compedibus vel manicis ferreis, si ei visum fuerit faciendum, super quo ipsius conscientiam oneramus, nec non inquirere contra illos, de quibus pro hujusmodi negotio secundum Deum et justitiam viderit expedire. Duro tamen tradere carceri sive arcto qui magis ad poenam quam ad custodiam videatur, vel tormentis exponere illos, aut ad sententiam procedere contra eos, episcopus sine inquisitore, aut inquisitor sine episcopo dioecesano aut ejus officiali, vel episcopali sede vacante capituli super hoc delegato, si sui ad invicem copiam habere valeant, intra octo dierum spatium, postquam se invicem requisierint, non valebit, et, si secus praesumptum fuerit, nullum sit et irritum ipso jure.

Verum si episcopus vel ejus capituli sede vacante delegatus cum inquisitore, aut inquisitor cum altero eorumdem propter praemissa nequeat aut nolit personaliter convenire; possit episcopus, vel ejus seu capituli sede vacante delegatus inquisitori, et inquisitor episcopo vel ejus delegato, seu sede vacante illi qui ad hoc per capitulum fuerit deputatus, super illis committere vices suas, vel suum significare per litteras consilium et consensum.

Sane quia circa custodiam carcerum haerticalium, qui muri in quibusdam partibus vulgariter nuncupantur, multas fraudes dudum intelleximus perpetratas, nos, volentes super hoc providere, statuimus ut quilibet talis carcer vel murus, quem de cetero episcopo et inquisitori praedictis volumus fore communem, duos custodes habeat principales, discretos, industrios et fideles, unum, quem volet episcopus et providebit eidem, alium, de quo voluerit inquisitor, cui etiam providebit, et quilibet praedictorum custodum sub se alium bonum et fidum poterit habere ministrum. In quolibet etiam conclavi ejusdem carceris sive muri erunt duae claves diversae, quarum unam unus, aliam alius tenebit praedictorum custodum, et eam cum officio ministrandi, quae incarceratis fuerint ministranda, suo poterit committere vel subdelegare ministro.

Porro coram episcopo vel capitulo, sede vacante, et inquisitore praedictis vel substitutis ab eis custodes supra dicti, antequam suum officium exsequantur, jurabunt ad sancta Dei evangelia corporaliter a se tacta, quod in custodia immuratorum et aliorum, pro crimine supra dicto in sua custodia positorum et ponendorum, omnem diligentiam et sollicitudinem, quam poterunt, fideliter adhibebunt. Et quod alicui incarcerato nihil unus in secreto loquetur, quin hoc audiat alter custos. Et quod provisionem, quam incarcerati recipiunt ex ordinatione communi, et illud, quod a parentibus et amicis vel aliis personis fidelibus offeretur eisdem (nisi episcopi et inquisitoris vel suorum commissariorum ordinatio refragetur), ipsis fideliter et absque diminutione aliqua ministrabunt, nec in his fraudem aliquam adhibebunt. Et idem juramentum et coram eisdem personis ministri custodum, priusquam suum exerceant officium, exhibebunt. Et quia saepe contingit episcopos proprios habere carceres, sibi et dictis inquisitoribus non communes; volumus et districte praecipimus ut custodes ad incarceratorum pro dicto crimine custodiam per episcopos vel sede vacante per capitulum deputandi, et eorum ministri coram dictis inquisitoribus vel substitutis ab eis praestent simile juramentum. Notarii quoque inquisitionis coram episcopo et inquisitore vel substitutis ab eis jurabunt suum officium fideliter exercere. Et idem fiet de aliis personis necessariis ad praedictum officium exsequendum.

Verum quia nimis est grave, ad exterminationem pravitatis praedictae non agere quod ipsius contagiosa enormitas agendum requirit, grave est quoque et damnatione dignissimum malitiose insontibus eamdem imponere pravitatem; episcopo et inquisitori praedictis ac aliis, ad dicti exsecutionem officii substituendis ab eis, in virtute sanctae obedientiae et sub interminatione maledictionis aeternae, praecipimus ut sic discrete et prompte contra suspectos vel diffamatos de hujusmodi pravitate procedant, quod malitiose aut fraudulenter tantam labem, seu quod ipsos in exsecutione officii inquisitionis impediat, falso alicui non imponant. Quod si odii, gratiae vel amoris, lucri aut commodi temporalis obtentu contra justitiam et conscientiam suam omiserint contra quemquam procedere, ubi fuerit procedendum super hujusmodi pravitate, aut obtentu eodem, pravitatem ipsam vel impedimentum officii sui alicui imponendo, eum super hoc praesumpserint quoquo modo vexare; praeter alias poenas, pro qualitate culpae imponendas eisdem, episcopus aut superior suspensionis ab officio per triennium, alii vero excommunicationis sententias eo ipso incurrant. A qua quidem excommunicationis sententia, qui eamdem incurrerint, nisi per Romanum pontificem nequeant, praeterquam in mortis articulo, et tunc satisfactione praemissa absolutionis beneficium obtinere, nullo in hac parte privilegio suffragante.

Alia sane, quae circa praemissum inquisitionis officium a nostris sunt praedecessoribus instituta, quatenus praesenti decreto non obviant, sacri approbatione concilii roborata in sua volumus firmitate manere. (C. 1, in Clem., De haeret., V, 3.)

14. Nolentes splendorem solitum negotii fidei per actus indiscretos et improbos quorumvis inquisitorum haereticae pravitatis quasi tenebrosi fumi caligine obfuscari, hoc sacro concilio approbante statuimus, nullis ex tunc nisi qui quadragesimum aetatis annum attigerint, officium inquisitionis praedictae committi inquisitoribus, et tam ipsorum quam episcoporum seu capitulorum sede vacante super hoc deputatis commissariis quibuscumque districtius injungentes, ne praetextu officii inquisitionis quibusvis modis illicitis ab aliquibus pecuniam extorqueant, nec scienter attentent ecclesiarum bona ob clericorum delictum praedicti occasione officii fisco etiam ecclesiae applicare. Quodsi secus in his vel eorum altero fecerint, excommunicationis sententiae eos subjacere decernimus ipso facto, a qua non possint absolvi, praeterquam in mortis articulo, donec illis, a quibus extorserint, plene satisfecerint de pecunia sic extorta, nullis privilegiis, pactis aut remissionibus super hoc valituris. Notarii vero et officiales dicti officii, nec non fratres et socii inquisitorum et commissariorum ipsorum, qui dictos inquisitores aut commissarios secrete noverint talia commisisse, si indignationem Dei et apostolicae sedis vitare voluerint et offensam, ipsos graviter arguere et corrigere studeant in secreto. Quod si taliter ea sciverint, ut ea probare valeant, si sit opus, haec praelatis inquisitorum et commissariorum eorumdem, ad quos id pertinebit, nuntiare sollicite debeant, qui equidem praelati inquisitores et commissarios praedictos reos inde repertos ab officiis amovere, et amotos alias punire debite seu corrigere teneantur. Praelatis autem inquisitorum id negligentibus agere, praemissa omnia nunciari per praedictos locorum ordinarios volumus, quibus, ut ea in apostolicae sedis notitiam perferant, in virtute sanctae obedientiae districte praecipimus et mandamus. Porro inquisitoribus ipsis districtius inhibemus, ut nec abutantur quomodolibet concessione portationis armorum, nec officiales nisi sibi necessarios habeant tales, qui se conferant ad sua cum inquisitoribus ipsis officia exsequenda. (C. 2, in Clem., De haeret., V, 3.)

15. Ex gravi ad nos insinuatione pervenit, quod quorumdam communitates locorum in offensam Dei et proximi, ac contra jura divina pariter et humana usurariam approbantes quodammodo pravitatem, per statuta sua juramento quandoque firmata usuras exigi et solvi nedum concedunt, sed ad solvendas eas debitores scienter compellunt, ac juxta ipsorum continentiam statutorum gravia imponendo plerumque usuras repetentibus onera, aliisque utendo super his diversis coloribus et fraudibus exquisitis, repetitionem impediunt earumdem. Nos igitur, perniciosis his ausibus obviare volentes, sacro approbante concilio statuimus ut, quicumque communitatum ipsarum potestates, capitanei, rectores, consules, judices, consiliarii aut alii quivis officiales statuta hujusmodi de cetero facere, scribere vel dictare, aut quod solvantur usurae, vel quod solutae, quum repetuntur, non restituantur plene ac libere, scienter judicare praesumpserint, sententiam excommunicationis incurrant, eamdem etiam sententiam incursuri, nisi statuta hujusmodi hactenus edita de libris communitatum ipsarum (si super hoc potestatem habuerint), infra tres menses deleverint, aut si ipsa statuta sive consuetudines, effectum eorum habentes, quoquo modo praesumpserint observare.

Ceterum, quia foeneratores sic ut plurimum contractus usurarios occulte ineunt et dolose, quod vix convinci possunt de usuraria pravitate; ad exhibendum, quum de usuris agetur, suarum codices rationum censura ipsos decernimus ecclesiastica compellendos.

Sane, si quis in illum errorem inciderit, ut pertinaciter affirmare praesumat, exercere usuras non esse peccatum; decernimus eum velut haereticum puniendum, locorum

nihilominus ordinariis et haereticae pravitatis inquisitoribus districtius injungentes ut contra eos, quos de errore hujusmodi diffamatos invenerint aut suspectos, tanquam contra diffamatos vel suspectos de haeresi procedere non omittant. (C.un., in Clem., De usuris, V, 5.)

16. Archiepiscopo, per quaevis loca exempta suae provinciae facienti transitum, aut ad ea forsan declinanti, ut crucem ante se libere portari faciat, benedicat populo, divina officia privatim vel publice ibidem audiat, et ea etiam in pontificalibus celebret et faciat in sua praesentia sine pontificalibus celebrari, quovis privilegio contrario non obstante, sacro approbante concilio praesentis constitutionis serie duximus concedendum. Simili modo concedimus episcopo ut in locis eisdem suae dioecesis possit populo benedicere, audire divina officia, ea etiam celebrare et in sua praesentia facere celebrari, sic tamen, quod praetextu concessionis hujusmodi in locis ipsis exemptis vel circa hoc privilegiatis nullam aliam jurisdictionem idem archiepiscopus vel episcopus exerceat, nec personis exemptis vel privilegiatis molestiam inferat, vel gravamen, nullumque exemptioni vel privilegiis aliud praejudicium generetur, nec ipsis archiepiscopo vel episcopo jus aliud quomodolibet acquiratur. (C.2, in Clem., De privileg., V, 7.)

17. Si quis suadente diabolo in hoc sacrilegii genus proruperit, quod quemvis pontificem injuriose vel temere percusserit, aut ceperit seu banniverit, vel haec mandaverit fieri, aut facta ab illis rata habuerit, vel socius in his fuerit facientis, aut consilium in his dederit aut favorem, seu scienter defensaverit eumdem; in illis casibus de praedictis, in quibus excommunicationem per jam editos canones non subiret, sit hujus nostrae constitutionis auctoritate, non obstante quacumque consuetudine, quam reputamus approbante sacro concilio potius corruptelam, anathematis mucrone percussus, a quo nequeat, nisi per summum pontificem, praeterquam in articulo mortis, absolvi. A feudis insuper, locationibus, officiis et beneficiis spiritualibus sive temporalibus, quae ab ecclesia, cui sic offensus praeest episcopus, obtinet, cadat hoc ipso, ac ad eamdem ecclesiam libere revertantur. Ipsius filii, per masculinam descendentes lineam usque ad generationem secundam, omni spe dispensationis adempta, reddantur ipso facto inhabiles ad ecclesiastica beneficia in civitate et dioecesi, in quibus idem episcopus praesidet, obtinenda. Terra quoque ipsius (cum tamen ultra unam dioecesim non contineat), usque ad condignam satisfactionem ejusdem, nec non locus et loca, in quibus captus episcopus detinebitur, quamdiu detentio ipsa in eisdem duraverit, ecclesiastico subjaceant interdicto. Quod si terra ejusdem duas dioeceses vel ultra contineat, dioecesis domicilii principalis ipsius, et illa etiam, in qua fuerit delictum commissum, si sua sit, et duae aliae, quae sub ipso sint eidem loco magis vicinae, interdicto subjaceant supra dicto. Et quia eo major erit ipsius confusio, quo sua fuerit culpa patentior; quousque dignam satisfactionem praestiterit, per omnes illius loci, in quo commissum est facinus, nec non civitatum et dioecesum vicinarum ecclesias, quibuslibet diebus dominicis et festivis, pulsatis campanis et candelis accensis, excommunicatus publice nuncietur. Et quum absolvendus fuerit, sufficienter et idonee caveat quod inferendae poenae parebit, et auxiliante Domino poenitentiam peraget injungendam. Civitas autem, quae praemissa vel eorum aliquod in episcopum suum commiserit, interdicto, donec satisfecerit, subjaceat memorato. Potestas vero, consiliarii, ballivi, scabini, advocati, consules, rectores et officiales ipsius quocumque nomine censeantur, in praemissis culpabiles existentes, similiter excommunicationis sententiae, a qua (nisi ut praemittitur) non valeant absolutionis obtinere beneficium, sint subjecti. Quae omnia tanto magis in episcoporum interfectoribus sunt servanda, quanto in eos severior, quam in praefatos poena debet exsurgere, et gravioris indignationis aculeus desaevire.

Nec super haec quisquam miretur, quod praemissa perpetrantibus poenas non in-

ferimus graviores. Licet enim (quod dicere pudet) haec, proh dolor! frequenter occurrant, multisque grassantibus opus esset exemplo, et ex dignitate offensi poenam metiri deceant offendentis; episcopi enim dicuntur sanctissimi, Christi legati existunt, spirituales sunt patres, nostrique fratres et coepiscopi, columnae comprobantur ecclesiae, quare gravem oporteret esse poenam culpae violantis dignitatem tantae praeeminentiae adaequandam; volumus tamen ad praesens in poenarum exaggeratione temperare rigorem, ad poenas alias processuri, si protervitatem delinquentium hoc exposcere videamus.

Sane, si quis in aliquo casuum praedictorum fuerit ab excommunicationis sententia in mortis articulo absolutus, nisi, postquam pristinae restitutus fuerit sanitati, quam cito commode, conspectui Romani pontificis se praesentare curaverit, ejus mandatum humiliter recepturus, prout justitia suadebit; in eamdem excommunicationis sententiam reincidat ipso facto. Quamvis enim super hoc satis plene in jure alibi sit provisum; ne tamen aliquis in hoc ex ignorantia juris se satagat excusare, hoc expresse praemissis duximus adnectendum. (C. 1, in Clem., De poenis, V, 8.)

18. Multorum ad nos gravis querela deduxit quod nonnulli, obtinentes temporale dominium, viros saepe ecclesiasticos capere, captosque, donec sua resignent beneficia, aut ne citati ad apostolicam sedem ab homine vel a jure venire ad ipsam valeant, ausu detinere sacrilego non verentur, citatos eosdem in exitu eorum districtum ut plurimum capientes. Considerantes igitur quantum ex his tam nostro et apostolicae sedis honori, quam personarum ecclesiasticarum quieto et prospero statui non sine damnanda exempli pernicie derogetur, sacro approbante concilio, statuimus ut praeter sententiam canonis, quam facientes et fieri procurantes praemissas incurrere dignoscuntur, procurantes ipsi, personae ecclesiasticae existentes, a perceptione fructuum ecclesiarum suarum, si fuerint praelati, triennio sint suspensi. Quod si inferiores exstiterint, eo ipso obtentis beneficiis sint privati, illis poenam incursuris eamdem, qui, ne citati, ut praemittitur, ad sedem apostolicam veniant, sed ut se obtentu hujusmodi a veniendo excusent, a potestate saeculari se capi, ut interdum contigisse audivimus, procurarint. Sane resignationes beneficiorum, modo supra dicto extortas (licet a resignantium ipsorum praelatis receptae aut ratae habitae fuerint), nullius omnino decernimus esse firmitatis, locorum ordinariis injungentes ut, postquam eis constiterit, aliquos sibi subjectos poenam et sententiam incurrisse praemissas, ipsas publicare non differant, exsecutionique debitae, prout ad eos pertinuerit, demandare. (C. 2, in Clem., De poenis, V, 8.)

19. Gravis ad nos praelatorum querela perduxit quod nobiles quidam et domini temporales, terris eorum ecclesiastico suppositis interdicto, nedum in locorum suorum capellis, sed et in collegiatis et aliis insignium locorum ecclesiis missas et alia divina officia publice et solemniter faciunt celebrari, ad officia eadem celebranda nunc hos, nunc illos vocantes, et interdum (quod est deterius) compellentes, hisque non contenti excessibus, per campanarum non solum pulsationem, sed et voce praeconia populos etiam interdictos, ut interdicti non obstante sententia ad audiendas missas hujusmodi veniant, faciunt evocari. Nonnulli quoque ipsorum suis plerumque subjectis, ne, licet excommunicationis vel interdicti sententia publice sint innodati, de ecclesiis, dum in ipsis missarum celebrantur solemnia, instantibus etiam celebrantibus exeant, praecipere non verentur, ex quo frequenter contingit quod non sine Dei offensa clerique ac populi scandalo ipsa missarum solemnia remanent inexpleta. Ne igitur excessus sic graves excedentium impunitate trahantur ab aliis in exemplum; praesumptores praefatos, qui locis interdicto suppositis quemquam de cetero divina celebrare officia quomodolibet cogere, aut qui modo praedicto ad officia eadem audienda aliquos, excommunicationis

praesertim vel interdicti ligatos sententia, evocare, seu qui, ne excommunicati publice aut interdicti de ecclesiis, dum in ipsis missarum aguntur solemnia, a celebrantibus moniti, ut exeant, prohibere, nec non excommunicatos publice et interdictos, qui in ipsis ecclesiis, nominatim a celebrantibus ut exeant moniti, remanere praesumpserint, excommunicationis sententia, a qua per sedem duntaxat apostolicam possint absolvi, sacro approbante concilio innodamus. (C. 2, in Clem., De sentent. excomm., V, 10.)

20. Ad nostrum, quod dolentes referimus, pervenit auditum, quod ecclesiarum praelati, ad monasteria Cisterciensis ordinis accedentes, licet ab eis caritative recipiantur, et eis curialiter necessaria ministrentur, cibis tamen regularibus non contenti contra privilegia dicti ordinis carnes petunt, et, si eis non ministrentur, auferunt violenter, et licet in locis eisdem fiant eleemosynae competenter, ipsi tamen praelati ipsis religiosis invitis alias eleemosynas faciunt, etiam in aliquibus locis, in quibus procurationes non habent de consuetudine vel de jure. Pro equitaturis quoque ferrandis, licet ferris non egeant, et coci eorum sui officii ratione pecuniam exigunt et extorquent, nec compositiones, super procurationibus inter praelatos ipsos et eos initas, eis servant. Ipsis etiam in recipiendis procurationibus ita graves exsistunt, quod, ipsis in eorum monasteriis et ecclesiis procuratores recipientibus, longi temporis victum brevis hora consumit, et, dum procurationes recipiunt, canes venaticos, falcones et accipitres secum habent, et nisi voluntati satisfiat eorum, valvae monasteriorum seu ecclesiarum per violentiam saepe franguntur, et ornamenta ecclesiae exportantur, pluresque procurationes recipiunt una die sedis apostolicae privilegio non suffulti, interdum in pecunia numerata, visitationis etiam officio non impenso, et occasione dictarum procurationum iidem praelati ab ipsis frequenter exigunt quae illis solvere non tenentur, intolerbilia eisdem gravamina cumulantes. Sunt et nonnulli, qui procurationes nunciorum apostolicae sedis aliaque extraordinaria onera exemptis et aliis religiosis pro majori parte imponunt, ut se ac presbyteros liberent saeculares, religiosos ad ordinandum hujusmodi onerum distributionem minime assumentes. In multis etiam aliis praefati praelati exempta monasteria et ipsorum ecclesias utroque illis jure subjectas gravant in procurationibus recipiendis et oneribus insolitis imponendis. Nos igitur, super his volentes de opportuno remedio providere, sacri approbatione concilii duximus statuendum, ut si episcopi non causa visitationis, sed caritative hospitalitatis ad monasteria venerint supra dicta, victualia gratiose recipiant, quae caritatis gratia eis fuerint ministrata. Ipsis autem episcopis ad monasteria venientibus supra dicta, et procurationes ibidem recipientibus, sibi debitas de jure communi, consuetudine, privilegio vel jure alio speciali, in domibus ipsorum monasteriorum, extra tamen septa ipsorum exsistentibus, si quae fuerint ad hoc aptae, alioquin intra septa ipsa, non tamen intra portam, quam regularem appellant, carnium pro congruentia temporis, si voluerit privilegio non obstante quocumque), cibaria ministrentur. Nec inconveniens reputamus, si fragmenta, quae de mensis ipsorum episcoporum et suorum familiarium colliguntur, per ipsorum episcoporum eleemosynarios ibidem pauperibus erogentur. Ab aliis autem gravaminibus expressis superius praelati diligenter abstineant, si Dei et apostolicae sedis indignationem voluerint evitare. (C. 2, in Clem., De censibus, III, 13.) [2]

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[2] Textus latinus constitutionis "Exivi de paradiso" apud Hefele-Leclercq, VI, 703-15, et in Corpus Jur. Can., c. 1, in Clem., De verb. signif., V, 11, habetur.

CANONES CONCILII CONSTANTIENSIS (OECUMEN. XVI)

ANNIS 1414–18 HABITI[1]

1. Attendentes, quod a tempore obitus felicis recordationis Gregorii papae undecimi praedecessoris nostri, nonnulli Romani pontifices, aut pro Romanis pontificibus se gerentes, et in suis diversis obedientiis reputati, pro sua voluntate, aut per importunitatem petentium, nonnullas ecclesias, monasteria, capitula, conventus, prioratus, beneficia, loca et personas a jurisdictionibus ordinariorum tempore dicti Gregorii nullatenus exemptas, vel exempta, de novo a dictorum ordinariorum jurisdictionibus exemerunt, in grave ipsorum ordinariorum praejudicium; nos, volentes hujusmodi praejudicio obviare, omnes exemptiones ecclesiarum cathedralium, monasteriorum, capitulorum, conventuum, prioratuum, beneficiorum, locorum, personarum quarumcumque, etiam si ex praedictis aliquod monasterium fuerit exemptum, et postea subjectum monasterio diversi habitus vel coloris, a tempore obitus dicti Gregorii undecimi, per quoscumque pro Romanis pontificibus se gerentes (etiamsi per nos forsan approbatae fuerint ex certa scientia, vel innovatae parte non vocata), de novo factas, quae tamen ante exemptionem hujusmodi nulla exemptione gaudebant, sed simpliciter subjiciebantur ordinariae jurisdictioni, nullumque ante illud tempus habuerunt initium; exceptis etiam exemptionibus, quae uni toti ordini et quae ecclesiis, monasteriis, capitulis, conventibus, beneficiis sive locis, a praedicto tempore sub modo exemptionis aut conditione fundatis, aut contemplatione novae fundationis, seu universitatibus studiorum generalium, aut collegiis scholarum, aut per modum confirmationis, augmenti aut additionis factae fuerint, aut concessae; aut super quibus praesentibus et auditis, quorum intererat, auctoritate competente ordinatum fuerit; seu in quibus ordinari consenserint (et omnes exemptiones perpetuas per inferiores a papa factas); sacro approbante concilio revocamus (etiam si super ipsis lis pendeat indecisa, ipsam penitus extinguentes), ecclesias, monasteria, et alia loca praedicta in pristinam ordinariorum jurisdictionem reducimus. Ceteris autem exemptionibus ante obitum dicti Gregorii habitis vel concessis, nullum volumus per hoc praejudicium generari. Insuper non intendimus exemptiones de cetero facere, nisi causa cognita, et vocatis quorum interest.

2. Uniones et incorporationes a tempore obitus Gregorii undecimi factas seu concessas, cum certa regula dari non possit, ad querelas eorum, quorum interest (nisi fuerint impetrantes beneficia sic unita), si non ex rationabilibus causis et veris factae fuerint, licet Apostolicae Sedis auctoritas intervenerit, revocabimus justitia mediante.

3. Fructus et proventus ecclesiarum, monasteriorum, beneficiorum, vacationis tempore obvenientes, juris et consuetudinis vel privilegii dispositioni relinquimus, illosque nobis vel Apostolicae camerae prohibemus applicari.

4. Multae contra simoniacam pravitatem olim factae sunt constitutiones, quibus morbus ille non potuit competenter exstirpari. Nos volentes de cetero, ut possumus, attentius providere, sacro approbante concilio declaramus, quod ordinati simoniace, ab

[1] Hefele-Leclercq, VII, 531–34.

exsecutione suorum ordinum sint eo ipso suspensi. Electiones autem, postulationes, confirmationes, et quaevis provisiones simoniacae ecclesiarum, monasteriorum, dignitatum, personarum, officiorum et beneficiorum ecclesiasticorum quorumcumque deinceps factae, nullae sint ipso jure, nullumque per illas jus cuiquam acquiratur; nec promoti, confirmati, aut provisi faciant fructus suos; sed ad illorum restitutionem, tanquam inique ablata percipientes, teneantur. Statuentes insuper, quod dantes et recipientes ipso facto sententiam excommunicationis incurrant, etiam si pontificali aut cardinalatus praefulgeant dignitate.

5. Quoniam beneficia propter officia conceduntur, reputamus absurdum, ut qui beneficia obtinent, recusent aut negligant officium exercere. Nos igitur, sacro approbante concilio, omnes dispensationes a quibuscumque pro Romanis pontificibus se gerentibus concessas quibuscumque electis, confirmatis, seu provisis ad ecclesias, monasteria, prioratus conventuales, decanatus, archidiaconatus, et alia quaecumque beneficia, quibus certus ordo debitus est vel annexus, ne munus consecrationis episcopi, sive benedictionem abbatis, aut ceteros debitos aut annexos ordines suscipiant, praeter illas quae secundum formam constitutionis Bonifacii octavi, quae incipit *Cum ex eo*, factae sunt, revocamus; statuentes, ut qui de praesenti illos vel illa obtinent, infra sex menses a die publicationis hujusmodi constitutionis nostrae, et qui in posterum obtinebunt, infra terminum juris se faciant consecrari, aut benedici, seu ad alium debitum ordinem promoveri. Alioquin sint ipsis monasteriis, ecclesiis, dignitatibus, personatibus, officiis et beneficiis pro ipso jure privati, et aliis libere conferantur, aut provideatur de illis, ceteris constitutionibus circa hoc editis in suo robore duraturis.

6. Praecipimus et mandamus, jura quae prohibent inferioribus a papa decimas et alia onera ecclesiis et personis ecclesiasticis imponi, districtius observari. Per nos autem nullatenus imponantur generaliter super totum clerum, nisi ex magna et ardua causa et utilitate, universalem ecclesiam concernente, et de consilio et consensu et subscriptione fratrum nostrorum S. R. E. cardinalium et praelatorum, quorum consilium commode haberi poterit. Nec specialiter in aliquo regno vel provincia, inconsultis praelatis ipsius regni vel provinciae, et ipsis non consentientibus, vel eorum majori parte, et eo casu per personas ecclesiasticas et auctoritate Apostolica dumtaxat leventur.

7. Inter ceteros praelatorum et clericorum excessus hoc maxime inolevit, quod spreta in vestibus forma ecclesiasticae honestatis, plurimi delectantur esse deformes, et cupiunt laicis conformari, quodque mente gerunt, habitu confitentur. Unde praeter ceteras quae circa vestes, tonsuram et habitus clericorum, tam in formis quam in coloribus, atque comam seu capillos, vitamque et honestatem clericorum jura statuunt, et quae nimium collapsa sunt tam in saecularibus quam in regularibus, sacro approbante concilio innovamus et praecipimus diligentius observari. Illum specialiter abusum, eodem approbante concilio, decernimus penitus abolendum, quod in quibusdam partibus nonnulli clerici et personae ecclesiasticae saeculares et regulares, etiam (quod magis exsecramur) praelati ecclesiarum, manicas ad cubitum pendentes, et longas cum magna sumptuosa superfluitate vestes, etiam fissas retro et in lateribus cum fodraturis ultra oram excedentibus etiam in fissuris deferunt, et cum talibus in ecclesiis cum superpelliciis ac aliis vestibus ad cultum et officium ecclesiasticum ordinatis, etiam intra ecclesias ipsas, in quibus beneficiati existunt, non verentur divinis officiis interesse. Hanc vestium deformitatem in quibuscumque personis ecclesiasticis reprobamus, ac usum talium inhibemus; contrarium autem facientes, ut transgressores canonum puniantur;

specialiter statuentes, ut quicumque beneficiatus, aut officium in ecclesia gerens, in habitu hujusmodi divinis officiis praesumpserit interesse, pro qualibet vice a participatione proventuum ecclesiasticorum per mensem noverit se suspensum, fructusque illi fabricae illius ecclesiae applicentur.

CANONES CONCILII BASILEENSIS (OECUMEN. XVII)

ANNIS 1431–49 HABITI[1]

1. Quicumque clericus, cujuscumque status, conditionis, religionis, dignitatis, etiamsi pontificalis vel alterius praeeminentiae exsistat, qui post hujus constitutionis notitiam, quam habere praesumatur, per duos menses post publicationem ejusdem in ecclesiis cathedralibus, quam ipsi dioecesani omnino facere teneantur, postquam eadem constitutio ad eorum notitiam pervenerit, fuerit publicus concubinarius, a perceptione fructuum omnium suorum beneficiorum trium mensium spatio sit ipso facto suspensus; quos suus superior in fabricam vel aliam evidentem ecclesiarum utilitatem, ex quibus hi fructus percipiuntur, convertat; necnon et hujusmodi publicum concubinarium, ut primum talem esse innotuerit, mox suus superior monere teneatur, ut infra brevissimum terminum concubinam dimittat. Quam si non dimiserit, vel dimissam aut aliam publice resumpserit, jubet haec sancta synodus ut ipsum suis omnibus beneficiis omnino privet. Et nihilominus hi publici concubinarii, usquequo cum eis per suos superiores, post ipsarum concubinarum dimissionem, manifestamque vitae emendationem, fuerit dispensatum, ad susceptionem quorumcumque bonorum, dignitatum, beneficiorum vel officiorum sint inhabiles. Qui si post dispensationem recidivo vomitu ad hujusmodi publicum concubinatum redierint, sine spe alicujus dispensationis ad praedicta prorsus inhabiles exsistant. Quod si hi, ad quos talium correctio pertinet, eos (ut praedictum est) punire neglexerint, eorum superiores tam in ipsos de neglectu, quam in illos pro concubinatu, modis omnibus digna punitione animadvertant. In conciliis etiam provincialibus et synodalibus adversus tales punire negligentes, vel de hoc crimine diffamatos, etiam per suspensionem a collatione beneficiorum vel alia condigna poena severiter procedatur. Et si hi, quorum destitutio ad summum pontificem spectat, per concilia provincialia aut suos superiores propter publicum concubinatum reperiantur privatione digni, statim cum processu inquisitionis ipsi summo pontifici deferantur. Eadem diligentia et inquisitio in quibuscumque capitulis generalibus et provincialibus quoad suos servetur, poenis aliis contra praedictos et alios non publicos concubinarios statutis in suo robore permansuris. Publici autem intelligendi sunt non solum hi quorum concubinatus per sententiam aut confessionem in jure factam, seu per rei evidentiam, quae nulla possit tergiversatione celari, notorius est; sed qui mulierem de incontinentia suspectam et infamatam tenet, et per suum superiorem admonitus ipsam cum effectu non dimittit. Quia vero in quibusdam regionibus nonnulli jurisdictionem ecclesiasticam habentes, pecuniarios quaestus a concubinariis percipere non erubescunt, patiendo eos in tali foeditate sordescere; sub poena maledictionis aeternae praecipit, ne deinceps sub pacto, compositione, aut spe alicujus quaestus, talia quovis modo tolerent aut dissimulent; alioquin ultra praemissam negligentiae poenam, duplum ejus quod propterea acceperint, restituere ad pios usus omnino teneantur et compellantur. Ipsas autem concubinas, seu mulieres suspectas, praelati modis omnibus curent a suis subditis etiam per brachii saecularis auxilium, si opus fuerit, penitus arcere; qui etiam ex tali concubinatu procreatos filios apud patres suos cohabitare non permittant. Jubet insuper haec sancta

[1] Hardouin, *Conciliorum coll.*, VIII, 1193–99.

synodus, ut etiam in praedictis synodis et capitulis haec constitutio publicetur, et quilibet suos subditos ad ipsarum concubinarum dimissionem moneat diligenter. Injungat praeterea omnibus saecularibus viris, etiamsi regali praefulgeant dignitate, ne ullum qualecumque inferant impedimentum, quocumque quaesito colore, praelatis qui ratione sui officii adversus suos subditos pro hujusmodi concubinatu procedunt. Et cum omne fornicationis crimen lege divina prohibitum sit, et sub peccati mortalis poena necessario evitandum, monet omnes laicos tam uxoratos quam solutos, ut similiter a concubinatu abstineant. Nimis enim reprehensibilis est qui uxorem habet, et ad alienam mulierem accedit; *qui vero solutus est, si continere nolit*, juxta Apostoli consilium, *uxorem ducat*. Pro hujus autem divini observatione praecepti, hi, ad quos pertinet, tam salutaribus monitis quam aliis canonicis remediis omni studio laborent.

2. Ad vitandum scandala et multa pericula, subveniendumque conscientiis timoratis, statuit etiam quod nemo deinceps a communione alicujus in sacramentorum administratione vel receptione, aut aliis quibuscumque divinis, vel extra, praetextu cujuscumque sententiae aut censurae ecclesiasticae, seu suspensionis, aut prohibitionis, ab homine vel a jure generaliter promulgatae, teneatur abstinere, vel aliquem vitare, aut interdictum ecclesiasticum observare; nisi sententia, prohibitio, suspensio, vel censura hujusmodi, fuerit in vel contra personam, collegium, universitatem, ecclesiam aut locum certum aut certam, a judice publicata vel denunciata specialiter aut expresse; aut si aliquem ita notorie excommunicationis sententiam constiterit incidisse, quod nulla possit tergiversatione celari, aut aliquo modo juris suffragio excusari. Nam a communione illius abstineri vult juxta canonicas sanctiones. Per hoc tamen hujusmodi excommunicatos, suspensos, interdictos, seu prohibitos, non intendit in aliquo relevare, nec eis quomodolibet suffragari.

3. Quoniam ex indiscreta interdictorum promulgatione multa consueverunt scandala evenire; statuit haec sancta synodus, quod nulla civitas, oppidum, castrum, villa, aut locus, ecclesiastico supponi possint interdicto, nisi ex causa, seu culpa ipsorum locorum aut dominii seu rectorum vel officialium. Propter culpam autem, seu causam alterius cujuscumque privatae personae, hujusmodi loca interdici nequaquam possint auctoritate quacumque ordinaria vel delegata; nisi talis persona prius fuerit excommunicata ac denunciata, seu in ecclesia publicata, ac domini seu rectores vel officiales ipsorum locorum, auctoritate judicis requisiti hujusmodi personam excommunicatam infra biduum inde cum effectu non ejecerint, aut ad satisfaciendum compulerint; qua etiam post biduum ejecta, recedente vel satisfaciente, mox divina resumi possint. Quod etiam in pendentibus locum habeat.

4. Ut lites citius terminentur, super eodem gravamine, aut super eadem interlocutoria vim diffinitivae non habente, nullatenus liceat secundo appellare. Quodque ante diffinitivam frivole vel injuste appellans, ultra condemnationem expensarum, damnorum, et interesse, in quindecim florenis auri de camera parti appellatae per appellationis judicem condemnetur.

5. In nomine Spiritus sancti Paracleti statuit haec sancta synodus, quod tam in curia Romana quam alibi, pro seu in confirmatione electionum, admissione postulationum, praesentationum provisione, collatione, dispositione, electione postulatione, praesentatione, etiam a laicis facienda, institutione, installatione, et investitura, de ecclesiis etiam cathedralibus et metropolitanis, monasteriis, dignitatibus, beneficiis, officiisque ecclesiasticis quibuscumque, necnon ordinibus sacris et benedictione ac pallio, de cetero nihil penitus ante vel post exigatur ratione litterarum bullae sigilli, annatarum com-

munium, et minutorum servitiorum, primorum fructuum, deportuum, aut sub quocumque alio titulo, colore, vel nomine, praetextu cujusvis consuetudinis, privilegii vel statuti, aut alia quavis causa vel occasione, directe vel indirecte; solum scriptoribus, abbreviatoribusque et registratoribus litterarum seu minutarum, pro ipsorum labore competenti salario solvendo. Huic autem sacro canoni si quis exigendo, dando, vel promittendo contraire praesumpserit, poenam incurrat adversus simoniacos inflictam, et in ipsis dignitatibus ac beneficiis taliter obtentis nullum jus ac titulum acquirat. Obligationes quoque, promissiones et censurae ac mandata, et quidquid in praejudicium decreti hujus saluberrimi fieri continget, nullas obtinere vires atque irrita censeantur. Et si (quod absit) Romanus pontifex, qui prae ceteris universalium conciliorum exsequi et custodire canones debet, adversus hanc sanctionem aliquid faciendo ecclesiam scandalizet, generali concilio deferatur. Ceteri vero pro modo culpae juxta canonicas sanctiones per suos superiores digna ultione puniantur.

6. Quicumque non violentus, sed habens coloratum titulum, pacifice et sine lite praelaturam, dignitatem, beneficium vel officium triennio proximo hactenus possedit, vel in futurum possidebit, non possit postea in petitorio vel possessorio a quoquam etiam ratione juris noviter impetrati, molestari; excepto hostilitatis casu, vel alterius legitimi impedimenti, de quo protestari, et juxta concilium Viennense illud intimare teneatur. Lis autem hoc casu quoad futuras controversias intelligatur, si ad exsecutionem citationis, jurisque sui in judicio exhibitionem, ac terminorum omnium observationem, processum fuerit. Ordinarii autem diligenter inquirant, ne quis sine titulo beneficium possideat. Quod si talem quandocumque repererint, declarent jus illi non competere, vel huic (si sibi videatur) nisi sit intrusus, seu violentus, aut alias indignus, vel alteri idoneo provideant.

7. Si quis principem saeculi rogaturus, habitu honesto, gestu decenti, prolatione non praecipiti, sed distincta, attenta quoque mente, seipsum ac verba studet componere, quanto diligentius in sacro loco omnipotentem oraturus Deum, haec omnino facere curare debet? Statuit igitur sancta synodus, ut in cunctis cathedralibus ac collegiatis ecclesiis, horis debitis, signis congrua pulsatione praemissis, laudes divinae per singulas horas non cursim ac festinanter, sed sedatim ac tractim, et cum pausa decenti, praesertim in medio cujuslibet versiculi Psalmorum, debitam faciendo inter solemne ac feriale officium differentiam, reverenter ab omnibus persolvantur. Horas canonicas dicturi, cum tunica talari ac superpelliciis mundis ultra medias tibias longis, vel cappis, juxta temporum ac regionum diversitatem, ecclesias ingrediantur; non caputia, sed almucias vel birreta tenentes in capite. Qui cum in choro fuerint, gravitatem servent, quam et locus et officium exigunt; non insimul aut cum aliis confabulantes seu colloquentes, aut litteras seu scripturas alias legentes. Et cum psallendi gratia ibidem conveniant, juncta ac clausa labia tenere non debent; sed omnes, praesertim qui majore funguntur honore, in Psalmis, hymnis et canticis Deo alacriter modulentur. Cum dicitur, *Gloria Patri et Filio et Spiritui Sancto*, omnes consurgant. Cum nominatur gloriosum illud nomen Jesus, *in quo omne genu flectitur, caelestium, terrestrium et infernorum*, omnes caput inclinent. Nemo ibidem, dum horae in communi publice cantantur, legat vel dicat privatim officium; nam non solum obsequium, quo obnoxius est choro, subtrahit, sed alios psallentes perturbat. Super his debite observandis, aliisque ad divini officii prosecutionem ac chori disciplinam spectantibus, decanus vel cui onus incumbit, diligenter invigilet, hinc inde, ne quid inordinate fiat, circumspiciens. Horum autem transgressores, illius horae in qua circa praedicta excesserint, vel alia majori, proud transgressionis gravitas exigit, plectentur poena.

8. Qui in matutinis ante finem Psalmi, *Venite exsultemus*, in aliis horis ante finem primi Psalmi, in Missa ante ultimum *Kyrie eleison*, usque in finem divino officio non interfuerit, nisi forte necessitate cogente ac petita et obtenta a praesidente chori licentia discedere oporteat, pro illa hora absens censeatur, salvis ecclesiarum consuetudinibus, si quae forte circa hoc arctiores exsistant. Idem in his observetur, qui a principio usque in finem in processionibus non permanserint. Pro cujus exsecutione deputetur aliquis onus habens notandi personas singulas statuto tempore non convenientes, juramento adstrictus agere fideliter, et nulli parcere. Jubet etiam haec sancta synodus, quod in illis ecclesiis in quibus singulis horis certae distributiones statutae non sunt, omnino etiam de grossis fructibus (si opus sit) deputentur, ut juxta mensuram laboris plus minusve quisque capiat emolumenti; tollens prorsus abusum illum, quo in una dumtaxat hora praesens totius diei distributiones usurpat; et illum quo praepositi, vel decani, aut alii officiales, ex hoc solum quod officiales sunt, licet actualiter pro utilitate ecclesiae non absint, quotidianas distributiones percipiunt.

9. Quoscumque etiam alibi beneficiatos, seu in sacris constitutos, cum ad horas canonicas teneantur, admonet haec sancta synodus, si orationes suas Deo acceptas fore cupiunt, ut non in gutture, vel inter dentes, seu degluttiendo aut syncopando dictiones nec colloquia, vel risus intermiscendo, sed sive soli, sive associati, diurnum nocturnumque officium reverenter verbisque distinctis peragant; ac tali in loco, unde a devotione non retrahantur; ad quam se disponere et praeparare debent, juxta id quod scriptum est: *Ante orationem praepara animam tuam, ne sis quasi qui tentat Deum.*

10. Quicumque in ecclesia beneficiatus, praesertim de majoribus, divinorum tempore pro ecclesiam vel foris circa ipsam deambulando, aut cum aliis colloquendo, vagari visus fuerit, non solum illius horae, sed totius diei praesentiam ipso facto amittat. Qui si semel correctus non destiterit, per mensem distributionibus careat, vel graviori (si pertinacia exegerit) poenae subjaceat, ita ut tandem desistere cogatur. Prohibeatur etiam ne divina officia tumultuosi quorumcumque per ecclesiam discursus impediant aut perturbent. Regulares qui in conventualibus ecclesiis circa praedicta excesserint, gravi superioris arbitrio castigentur.

11. Ut cuncta in domo Dei ordinate procedant, et quilibet sciat quid sibi agendum imminet, statuatur tabella aliqua continue pendens in choro, in qua quid per unumquemque ex canonicis, vel aliis beneficiatis, in singulis horis per hebdomadam aut majus tempus, legendum cantandumve sit scribatur. Qui autem secundum quod ibi descriptum fuerit facere per se vel alium neglexerit, pro qualibet hora distributiones unius diei amittat.

12. Abusum aliquarum ecclesiarum, in quibus *Credo in unum Deum*, quod est symbolum et confessio fidei nostrae, non complete usque ad finem cantatur, aut praefatio seu oratio Dominica omittitur, vel in ecclesiis cantilenae saeculares voce admiscentur, seu Missa etiam privata sine ministro aut per secretas orationes ita submissa voce dicitur, quod a circumstantibus audiri non potest, abolentes; statuimus ut qui in his transgressor inventus fuerit, a suo superiore debite castigetur.

13. Abusum etiam illum cultui divino manifeste derogantem, quo nonnulli ecclesiarum canonici contrahentes debita, sic se creditoribus obligant, ut nisi statuto tempore satisfaciant, a divinis cessent officiis, abolentes, et obligationem hujusmodi, etiamsi jurejurando firmata sit, irritam decernentes; statuimus ut qui talem illicitum contractum

fecerint, trium mensium fructus ipsi ecclesiae applicandos ipso facto amittant. Et quamdiu divina non resumpserint, nullos ex ipsa ecclesia proventus percipiant.

14. Prohibet haec sancta synodus, ut tempore Missae majoris, praesertim solemnibus diebus, capitula seu actus capitulares, aut alii tractatus, per canonicos non celebrentur, nisi forte urgens et evidens ingrueret necessitas. Qui vero ad talem horam capitulum indixerit, a distributionibus quotidianis per hebdomadam sit suspensus, neque ipsi canonici pro hora illa distributiones ipsas lucrentur.

15. Turpem etiam illum abusum in quibusdam frequentatum ecclesiis, quo certis anni celebrationibus nonnulli cum mitra, baculo, ac vestibus pontificalibus more episcoporum benedicunt; alii ut reges ac duces induti, quod festum fatuorum vel innocentum seu puerorum, in quibusdam regionibus nuncupatur; alii larvales, et theatrales jocos, alii choreas et tripudia marium ac mulierum facientes homines ad spectacula et cachinnationes movent; alii comessationes et convivia ibidem praeparant; haec sancta synodus detestans, statuit et jubet tam ordinariis, quam ecclesiarum decanis et rectoribus, sub poena suspensionis omnium proventuum ecclesiasticorum trium mensium spatio, ne haec aut similia ludibria, neque etiam mercantias seu negotiationes nundinarum in ecclesia, quae domus orationis esse debet, ac etiam coemeterio, exerceri amplius permittant; transgressoresque per censuram ecclesiasticam aliaque juris remedia punire non negligant. Omnes autem consuetudines, statuta ac privilegia quae his non concordant circa haec decretis, nisi forte majores adjicerent poenas, irritas esse haec sancta synodus decernit.

CANONES CONCILII LATERANENSIS V (OECUMEN. XVIII)

ANNIS 1512–17 HABITI

Ex Bulla "Apostolici regiminis," sessio viii, 19 Dec., 1513.

Cum itaque diebus nostris (quod dolenter referimus) zizaniae seminator, antiquus humani generis hostis nonnullos perniciosissimos errores a fidelibus semper explosos in agro Domini superseminare et augere sit ausus, de natura praesertim animae rationalis, quod videlicet mortalis sit, aut unica in cunctis hominibus; et nonnulli temere philosophantes, secundum saltem philosophiam verum id esse asseverent; contra hujusmodi pestem opportuna remedia adhibere cupientes, hoc sacro approbante concilio damnamus et reprobamus omnes asserentes animam intellectivam mortalem esse, aut unicam in cunctis hominibus, et haec in dubium vertentes; cum illa non solum vere per se et essentialiter humani corporis forma exsistat, sicut in canone felicis recordationis Clementis Papae V praedecessoris nostri in generali Viennensi concilio edito continetur, verum et immortalis, et pro corporum quibus infunditur, multitudine singulariter multiplicabilis, et multiplicata, et multiplicanda sit. Quod manifeste constat ex evangelio, cum Dominus ait: *Animam autem occidere non possunt.*[1] Et alibi: *Qui odit animam suam in hoc mundo, in vitam aeternam custodit eam;*[2] et cum aeterna praemia, et aeterna supplicia pro merito vitae judicandis repromittit; alias incarnatio, et alia Christi mysteria nobis minime profuissent, nec resurrectio exspectanda foret, ac sancti et justi miserabiliores essent, juxta Apostolum, cunctis hominibus.[3] Cumque verum vero minime contradicat, omnem assertionem veritati illuminatae fidei contrariam, omnino falsam esse definimus; et ut aliter dogmatizare non liceat, districtius inhibemus; omnesque hujusmodi erroris assertionibus inhaerentes, veluti damnatissimas haereses seminantes, per omnia ut detestabiles et abominabiles haereticos et infideles, catholicam fidem labefactantes, vitandos et puniendos fore decernimus. Insuper omnibus et singulis philosophis in universitatibus studiorum generalium, et alibi publice legentibus, districte praecipiendo mandamus, ut cum philosophorum principia aut conclusiones, in quibus a recta fide deviare noscuntur, auditoribus suis legerint seu explanaverint, quale hoc est de animae mortalitate aut unitate, et mundi aeternatate, ac alia hujusmodi, teneantur eisdem veritatem religionis Christianae omni conatu manifestam facere, et persuadendo pro posse docere, ac omni studio hujusmodi philosophorum argumenta, cum omnia solubilia exsistant, pro viribus excludere atque resolvere. Et cum non sufficiat aliquando tribulorum radices praescindere, nisi et, ne iterum pullulent, funditus evellere; ac eorum semina originalesque causas, unde facile oriuntur, removere; cum praecipue humanae philosophiae studia diuturniora, quam Deus secundum verbum Apostoli evacuavit et stultam fecit, absque divinae sapientiae condimento, et quae sine revelatae veritatis lumine in errorem quandoque magis inducunt, quam in veritatis elucidationem; ad tollendam omnem in praemissis errandi occasionem, hac salutari constitutione ordinamus et statuimus, ne quisquam de cetero in sacris ordinibus con-

[1] Matt. 10:28.
[2] Joan. 12:25.
[3] Vide I Cor. 15:19.

stitutus, saecularis vel regularis, aut alias ad illos a jure arctatus, in studiis generalibus, vel alibi publice audiendo, philosophiae aut poesis studiis ultra quinquennium post grammaticam ac dialecticam, sine aliquo studio theologiae aut juris pontificii, incumbat. Verum dicto exacto quinquennio, si illis studiis insudare voluerit, liberum sit ei, dum tamen simul aut seorsum, aut theologiae aut sacris canonibus operam navaverit, ut in his sanctis et utilibus professionibus sacerdotes Domini inveniant, unde infectas philosophiae et poesis radices purgare et sanare valeant. Et hos canones per ordinarios locorum, ubi generalia studia vigent, et rectores universitatis eorumdem studiorum singulis annis in principio studii, in virtute sanctae obedientiae publicari mandamus.[4]

Ex Bulla "Supernae dispositionis arbitrio," sessio ix, 5 Maii, 1514.

1. Cum piae memoriae Alexander Papa tertius praedecessor noster etiam in Lateranensi concilio decreverit, ut aetas, morum gravitas, ac litterarum scientia in personis promovendis in episcopos et abbates diligenter inquirantur; nihilque magis Dei ecclesiae officiat, quam cum immeriti assumuntur praelati ad regimen ecclesiarum: propterea in promotionibus praelatorum, quarum a Romanis pontificibus magna ratio haberi debet, eo praesertim, quod de promotis per eos ad ecclesias seu monasteria in extremo judicio rationem Deo reddituri sunt; statuimus et ordinamus, ut deinceps perpetuis futuris temporibus, patriarchalibus, metropolitanis, ac cathedralibus ecclesiis, et monasteriis pro tempore vacantibus, de personis, juxta praefati Alexandri constitutionem, aetate matura, gravitate morum, litterarumque scientia praeditis, non ad alicujus instantiam, per commendam et administrationem seu conservationem, aut alio quovis modo provideatur, nisi ratione utilitatis ecclesiarum, prudentiae, nobilitatis, probitatis, experientiae atque curialitatis antiquae, cum competenti litteratura, et in sede Apostolica meritorum, aliter visum fuerit faciendum. Idemque in electis et postulatis, quorum electiones et postulationes per sedem Apostolicam admitti consueverunt, volumus observari. Et si de minoribus aetate triginta annorum ecclesiis aut monasteriis hujusmodi contigerit provideri, non dispensetur cum eisdem, ut ecclesiis citra vigesimum septimum aetatis annum, monasteriis vero citra vigesimum secundum praeesse valeant.

2. Quin immo ut accuratius diligentiusque idoneae personae promoveantur, statuimus, ut cardinalis, cui electionis, postulationis aut provisionis ecclesiae seu monasterii relatio committetur, antequam in sacro consistorio, ut moris est, referat commissionem examinis ac relationis hujusmodi sibi datam, uni cujuslibet ordinis antiquiori cardinali in ipso consistorio per seipsum; vel si ea die, qua sibi commissionis onus injunctum fuerit, consistorium non fuerit, per secretarium suum aut alium quemlibet ex suis domesticis familiaribus notam illam facere debeat; qui tres priores aliis quamprimum sui ordinis cardinalibus eam significare teneantur; negotiumque electionis, administrationis, postulationisve aut promotionis summarie et de plano per seipsum dictus relator examinet, et si qui contradixerint, his vocatis, idoneos, graves et fide dignos testes, et si expediens opusve fuerit, alios ex officio assumere, processusque et jura ejusmodi relationis, una cum dictis testium, die faciendae relationis secum ad consistorium deferre debeat; neque ullo modo referat, si praesens in curia promovendus majorem cardinalium partem antea non adiverit; ut quae a referente collega sint cardinales audituri, oculata fide, quantum ad personam promovendi attinet, cognoscere possint. Promotus vero eosdem cardinales qui praesentes in curia fuerint, ex antiquo more consuetudineque laudabili quamprimum visitare teneatur. Quem quidem morem laudabilemque consuetudinem innovamus, ac inviolabiliter observari mandamus.

[4] Hardouin, IX, 1719–20.

3. Et quoniam episcopalem dignitatem tueri illaesam, et ne improborum impugnationibus, aut accusantium calumniis passim pateat, muniri par est; statuimus, ut nullus episcopus aut abbas, quovis instante ac requirente, nisi sibi copia et facultas legitimae defensionis permittatur, etiam si crimina fuerint notoria, diligenterque partibus auditis, causa plenarie probata fuerit, dignitate privari valeat; neve aliquis praelatus invitus, nisi aliis justis efficacibusque rationibus et causis, transferatur juxta formam ac decretum concilii Constantiensis.

4. Et quoniam ex commendis monasteriorum (ut magistra rerum experientia saepius docuit) monasteria ipsa tam in spiritualibus quam in temporalibus graviter laeduntur; quippe quorum aedificia partim commendatariorum negligentia, partim avaritia vel incuria collabuntur, et in dies divinus cultus in his magis diminuitur; passimque obloquendi materia personis praesertim saecularibus praebetur, non absque dignitatis Apostolicae sedis diminutione, a qua commendae hujusmodi proficiscuntur: ut eorum indemnitati salubrius consulatur, volumus ac sancimus, ut cum illa per obitum abbatum qui illis praeerant vacaverint, nullo pacto cuiquam possint commendari, nisi pro conservatione auctoritatis Apostolicae sedis, et ad occurrendum malitiis illam impugnantium, pro temporum qualitate aliter nobis de fratrum nostrorum consilio visum fuerit expedire. Sed de persona idonea juxta praescriptam constitutionem eis ita provideatur, ut illis idonei abbates, prout decet, praefuturi sint. Ea vero monasteria, quae commendata fuerint, cum per eorum cessum vel decessum, quibus erant commendata, commendae hujusmodi cessaverint, cardinalibus dumtaxat ac personis qualificatis et bene meritis commendari possint; ita tamen, quod eorum monasteriorum commendatarii, quibus antea de cetero commendata fuerint, cujusvis dignitatis, honoris et praeeminentiae exsistant, etiamsi cardinalatus honore et dignitate fungantur, si mensam habuerint separatam, ac seorsum a mensa conventuali, quartam suae mensae partem pro instauratione fabricae, seu pro ornamentis, vestibus ac paramentis emendis sarciendisque, aut pauperum alimonia, aut sustentatione, ut major exiget ac suadebit necessitas; si vero mensa fuerit communis, tertiam omnium fructuum dicti monasterii sibi commendati partem pro supradictis oneribus supportandis, et sustentatione monachorum, omnibus aliis deductis oneribus, impartiri teneantur. Ac litterae, quae super monasteriorum hujusmodi commendis expedientur, cum clausula hoc ipsum specifice exprimente debeant expediri. Alioquin, si aliter expediantur, nullius sint roboris vel momenti. Et quoniam ecclesiis hujusmodi absque aliqua fructuum diminutione provideri decet, ut tam dignitati praesidentium, quam ecclesiarum et aedificiorum necessitati consulatur; decernimus pariter ac statuimus, ut super earumdem ecclesiarum fructibus pensiones minime reserventur, nisi ex resignationis causa, aut etiam alia, quae in secreto nostro consistorio justa, probabilis, et honesta habita fuerit.

5. Statuimus quoque, ut de cetero parochiales ecclesiae, ac dignitates majores et principales, aliaque beneficia ecclesiastica, quorum fructus, reditus et proventus ducentorum ducatorum auri de camera, secundum communem aestimationem, valorem annuum non constituunt vel attingunt; nec non hospitalia, leprosariae, xenodochia, cujuscumque valoris, quae ad pauperum usum et alimoniam instituta sunt, sanctae Romanae ecclesiae cardinalibus non commendentur, aut alio quovis titulo conferantur, nisi per obitum familiarium suorum vacaverint, quae illis commendari possint, ut illa ad illarum personarum sibi gratarum et idonearum commodum infra sex menses dimittere teneantur; quibus etiam, quoad beneficia, ad quae haberent regressum, praejudicare non intendimus.

6. Ordinamus etiam, ne ecclesiarum ac quorumcumque monasteriorum et militiarum membra a suo capite, quod est absurdum, absque legitima et rationabili causa disjungantur aut separentur. Uniones perpetuae, praeterquam in casibus a jure permissis, vel sine rationabili causa, nequaquam fiant.

7. Dispensationes autem ad plura incompassibilia ultra duo, nisi qualificatis juxta formam juris communis, non concedantur, nisi ex magna et urgenti causa. Et personis cujuscumque dignitatis parochiales ecclesias et earum perpetuas vicarias, ac dignitates majores et principales, etiam per viam unionis vel commendae ad vitam, ultra quatuor obtinentibus, exnunc terminum duorum annorum praefigimus; ut interim quatuor tantum ex eis retentis, reliquas dimittere teneantur, et beneficia dimittenda hujusmodi resignari valeant in manibus ordinariorum, ad effectum, ut de illis provideatur personis per eos nominandis, quacumque reservatione etiam generali, etiam ex qualitatibus resignantium personarum resultante, non obstante; quo elapso termino, nisi dimiserint, omnia vacare censeantur, ac possint libere ut vacantia impetrari; talesque praeterea retinentes poenas extravagantis, "Exsecrabilis," recolendae memoriae Joannis Papae vigesimisecundi etiam praedecessoris nostri incurrant. Item statuimus, ut speciales reservationes quorumcumque beneficiorum ad cujusvis instantiam minime concedantur.

De cardinalibus.

Et cum sanctae Romanae ecclesiae cardinales ceteros omnes in ipsa ecclesia post summum pontificem honore ac dignitate praecedant, conveniens ac debitum est, ut vitae munditia ac virtutum splendore cunctis praefulgeant. Quapropter non modo hortamur eos ac monemus, verum etiam statuimus et ordinamus, ut de cetero quilibet cardinalium pro tempore exsistens, juxta doctrinam Apostoli, ita sobrie, caste ac pie vivat, ut non solum a malo, sed ab omni etiam specie mali abstinens, coram hominibus luceat, Deumque in primis operibus honorificet.

1. Sint omnes vigiles, ac divinis officiis, Missarumque celebrationibus intenti; habeantque capellas suas in loco honesto, prout facere consueverunt. Sitque eorum domus, familia, mensa, supellexque, non fastu aut pompa, neque superfluis rebus, neque aliquo modo reprehensibilis, ne peccandi excedendique modum licentia inde nascatur; sed ut aequum est, modestiae et frugalitatis speculum dici mereantur. Illis itaque sint contenti, quae sacerdotalem prae se ferant modestiam, ac praelatos et quoscumque alios insignes viros ad Romanam curiam venientes benigne honorificeque, tam publice quam privatim, tractent, et apud nos et successores nostros gratiose liberaliterque eorum negotia commendata suscipiant.

2. Praeterea ministerium indecorum episcoporum praelatorumque in domibus non habeant, ne ceteris praeesse instituti, et sacro charactere insigniti, in vilia descendant ministeria, passimque pastoralis officii contemptum inducant. Eos itaque quos vel nunc habent, vel in posterum sunt habituri, honorifice, ut frates, ac juxta eorum status condecentiam tractent.

3. Cumque Romano pontifici communi omnium Christi fidelium Patri assistant, personarum acceptatores vel advocatos eos fieri valde inconveniens est. Propterea statuimus, ne partialitatem suscipiant aliquam, neque principum aut communitatum, vel quorumcumque aliorum contra quemquam, nisi quantum justitia et aequitas postulat, eorumque dignitas et conditio requirit, promotores aut defensores fiant; sed a privata

omni passione sejuncti, sedandis et componendis inter quoscumque litibus omni diligentia vacent incumbantque: principum et quorumcumque aliorum, ac praesertim pauperum et religiosorum justa negotia pio promoveant affectu: oppressos et injuste gravatos juxta vires suas et officii debitum adjuvent.

4. Tituli sui loca, si praesentes in curia fuerint, personaliter: si vero absentes, per vicarium idoneum semel saltem singulis annis visitent; clericos et populos ecclesiarum titulo suo subjectarum cum diligentia inquirant; vigilentque circa cultum divinum et bona dictarum ecclesiarum; moresque in primis et vitam clericorum et parochianorum solerter explorent, eosque omnes et singulos ad recte honesteque vivendum paterno moneant affectu.

5. Pro augmento autem divini cultus et salute animae suae, quilibet cardinalis vel in vita donet, vel in mortis articulo relinquat suo titulo, quantum sit satis ad presbyterum unum commode ibi sustentandum; vel si ecclesia indigeat reparatione, vel alia subventione, tantum illi relinquat vel donet, quantum conscientiae suae videbitur.

6. Et cum minime deceat, affines et consanguineos, praesertim benemeritos et ope indigentes, negligere, sed illis providere justum et laudabile sit, non propterea tamen vel beneficiorum multitudine vel ecclesiasticis redditibus ita eos impleri convenire arbitramur, ut ceteri damnum ex hujusmodi largitionis intemperantia patiantur, et inde scandalum nascatur. Statuimus itaque, ut ecclesiarum bona temere non effundant, sed ea in piis et sanctis operibus exponant, quorum causa magni et optimi redditus per sanctos patres statuti et ordinati fuerunt.

7. Volumus etiam ut ecclesiis eisdem cardinalibus commendatis, etiam si cathedrales, abbatialesve, aut prioratus, vel quaecumque alia beneficia ecclesiastica fuerint, absque omni prorsus excusatione procurent: ac omni conatu suo provideant debite inserviri cathdralibus dignos et idoneos vicarios, seu suffraganeos, prout consuetudo fuerit, cum digna et competenti mercede apponentes; reliquis autem sibi commendatis ecclesiis aut monasteriis de justo clericorum vel capellanorum, seu religiosorum aut monachorum, Deo sufficienter et laudabiliter servientium numero providentes; aedificia quoque, possessiones et jura quaecumque in statu convenienti conservent, et diruta instaurent, sicut ad bonorum praelatorum et commendatariorum officium spectat.

8. Statuimus etiam, ut dicti cardinales circa numerum familiarum, equorumque suis impensis alendorum, magna utantur circumspectione ac diligenti providentia, ne majorem numerum, quam sua facultas, conditiove ac dignitas patiatur, habentes, luxus ac prodigalitatis vitio notari possint; neve rursus avari sordidique habeantur, si in magnis et amplis redditibus, paucissimis victum praebeant: cum domus cardinalium patens hospitium, portusque ac refugium proborum et doctorum maxime virorum, et pauperum nobilium, honestarumque personarum esse debeat. Sint igitur circa modum et numerum tenendi prudentes, ac de familiarum qualitate in primis curiosi, ne ex alienis vitiis turpem sibi contrahant infamiae notam, vulgoque obloquendi calumniandique justas praebeant occasiones.

9. Et cum maxime providendum sit, ut non solum coram Deo, cui primum placere debemus, sed etiam coram hominibus opera nostra probentur: ut ceteris exemplo ad imitandum possimus esse, ordinamus ut quilibet cardinalis se domus ac familiae suae optimum rectorem praefectumque ostendat esse, tam circa ea quae extrinseca omnibus apparent, quam quae intus latent abscondita. Habeat itaque eorum quisque sacerdotes

et levitas honestis vestimentis indutos; attenteque provideat, ne quis in familia sua quoquo modo beneficiatus, et in sacris ordinibus constitutus, vestes portet versicolores, nec eo habitu utatur, qui ordini ecclesiastico parum conveniat. Quare in presbyteratus ordine constituti vestes colorum, quae clericis a jure non prohibeantur, deferre debeant usque ad talos saltem demissas. Et habentes dignitates in cathedralibus, et canonici etiam dictarum cathedralium, ac primam dignitatem in collegiatis habentes, et cardinalium capellani Missas celebrantes, caputium deferre in publico teneantur; scutiferis vero paulo supra talos concedantur.

10. Parafrenarii, quia in assiduo sunt motu, ministerioque funguntur laboriosiore, brevioribus ac magis expeditis vestibus uti possint, etiam si fuerint clerici, dummodo in presbyteratus ordine non sint constituti; ita tamen ut ab honestate non discedant, sed ita vivant, ut mores ecclesiasticis suis ordinibus non discrepent.

11. Reliqui vero clerici temperate ac modeste omnia faciant; et tam ipsi clerici beneficiati, quam in sacris ordinibus constituti, non comam neque barbam nutriant, neque mulas, aut equos cum phaleris, ornamentisque ex velluto aut serico factis habeant, sed ejusmodi rebus ex panno tantum aut corio simpliciter utantur.

12. Si quis autem familiarium praedictorum contra fecerit, aut post tres menses legitima monitione praecedente a praesentium publicatione, hujusmodi vestes prohibitas gestaverit, in excommunicationem incurrat. Si vero infra tres alios menses non se correxerit, a perceptione fructuum ex beneficiis quae obtinet, suspensus intelligatur. Quod si per alios sex menses in hujusmodi pertinacia obstinatus permanserit, legitima similiter monitione praecedente, beneficiis omnibus, quaecumque habet, privatus sit et esse censeatur; eaque sic vacantia a sede Apostolica libere impetrari valeant.

13. Quae omnia et singula in nostris et cujuscumque Romani pontificis pro tempore exsistentis familiaribus, et similiter in omnibus aliis clericis beneficiatis, vel in sacris ordinibus constitutis, ac etiam curialibus, locum habere volumus; hoc uno tantum excepto, quod dicti nostri et Romani pontificis familiares, rubri coloris vestimenta gestare possint, pro decentia et consuetudine dignitatis pontificalis.

14. Et quoniam ad cardinales maxime spectat operum optimorum cura, pro viribus laborabunt scire, quae regiones haeresibus, erroribusque ac superstitionibus contra veram et orthodoxam fidem infectae sint; et ubi divinorum mandatorum ecclesiastica deficiat disciplina; quique reges ac principes, seu populi bellis infestentur, vel infestari timeant. Haec et hujusmodi scire, ac nobis et Romano pontifici pro tempore exsistenti referre operam dabunt, ut opportuna et salutaria talibus malis ac pestibus remedia vigilanti studio excogitari valeant.

15. Et cum frequenti ac prope quotidiana experientia notum sit, provinciis ac civitatibus propter suorum legatorum de latere absentium multa saepius contingere mala, variaque non sine Apostolicae sedis praejudicio scandala oriri; statuimus et ordinamus, ut nullis cardinalibus provincias ac civitates legationis titulo obtinentibus, eas per locum tenentes aut officiales quoscumque administrare liceat; sed personaliter ipsi pro majori parte temporis adesse, atque eas omni vigilantia regere et gubernare teneantur. Et qui nunc titulum legationis obtinent, aut pro tempore obtinebunt, si in Italia, intra tres menses; si extra Italiam, quinque a die praesentis publicationis ad suas provincias ire, ac majorem temporis partem ibi residere teneantur; nisi de nostro et successorum nostrorum mandato, pro aliquibus gravioribus negotiis in Romana curia retineantur, vel ad

alia loca, prout necessitas postulat, mittantur; et tunc in dictis provinciis ac civitatibus vicelegatos, auditores et locum tenentes, ceterosque consuetos officiales, cum debitis provisionibus ac salariis habeant. Qui praemissa omnia et singula non servaverit, emolumentis quibuscumque legationis careat. Quae quidem propter hoc antiquitus ordinata et instituta fuerunt, ut opportuna legatorum praesentia populis esset salutaris; non ut ipsi laborum et curarum penitus expertes, lucro tantum sub legationis titulo inhiarent.

16. Et cum cardinalis officium in primis versetur in frequenti Romani pontificis assistentia, et sedis Apostolicae negotiis; propterea statuimus, ut omnes cardinales in Romana curia resideant, et qui sunt absentes, si in Italia, intra sex menses, si extra Italiam, infra annum a die publicationis praesentis constitutionis revertantur. Alioquin fructus beneficiorum et omnium officiorum suorum emolumenta amittant, omnibusque privilegiis generaliter et specialiter cardinalibus concessis, quam diu abfuerunt, omnino careant, exceptis tamen illis, quos ratione officii ab Apostolica sede injuncti, vel de Romani pontificis mandato aut licentia, vel justo metu, aut quavis alia legitima causa impediente, vel aegrotationis, abesse contingat; privilegiis, indultis et immunitatibus, eisdem cardinalibus concessis, et in bulla nostro sub data coronationis nostrae contentis et expressis, in suo robore nihilominus permanentibus.

17. Statuimus insuper, ut expensae funebres cardinalium, computatis omnibus, mille quingentorum florenorum summam excedere non debeant, nisi exsecutorum providentia, justis allegatis causis ac rationibus, plus expendendum esse duxerit. Exsequiae et castrum doloris prima et nona die fiant; infra octavam vero Missae de more celebrentur.

18. Pro reverentia autem sedis Apostolicae, utilitateque et honore communi pontificis et ipsorum cardinalium, ut scandalorum, quae nasci possent, occasio tollatur, majorque, in sacro senatu libertas votorum fiat; liceatque, ut par est, cardinali cuique secundum Deum et conscientiam suam libere et impune quodcumque sentiat dicere; statuimus, ne quis cardinalium vota in consistorio data, et quaecumque ibi gesta aut dicta, quae in odium aut praejudicium aut scandalum alicujus redundare possint, scripto aut verbo, vel quovis alio modo revelet, sub poena perjurii et inobedientiae. Et quotiescumque a nobis et Romano pontifice pro tempore exsistente specialiter et expresse ultra praemissa indictum fuerit super aliqua re silentium, si quis contra fecerit, ultra poenas excommunicationem latae sententiae incurrat, a qua non possit absolvi, nisi a nobis vel praefato pontifice Romano et cum expressione causae, praeterquam in mortis articulo.

Reformationes curiae et aliorum.

1. Et cum omnis aetas ab adolescentia prona sit ad malum, et a teneris assuefieri ad bonum magni sit operis et effectus; statuimus et ordinamus, ut magistri scholarium et praeceptores, pueros suos sive adolescentes nedum in grammatica et rhetorica, ac ceteris hujusmodi audire et instruere debeant; verum etiam docere teneantur ea, quae ad religionem pertinent; ut sunt praecepta divina, articuli fidei, sacri hymni et Psalmi, ac sanctorum vitae; diebus festivis nihil aliud eos docere possint, quam in rebus ad religionem et bonos mores pertinentibus; eosque in illis instruere, hortari et cogere, in quantum possint, teneantur; ut nedum ad Missas, sed etiam ad vesperas, divinaque officia audienda, ad ecclesias accedant, et similiter ad praedicationes et sermones audiendos impellant, nihilque contra bonos mores, aut quod ad impietatem inducat, eis legere possint.

2. Ad abolendam vero exsecrabilem blasphemiam, quae in maximum divini nominis et sanctorum contemptum supra modum invaluit, statuimus et ordinamus, ut quicumque Deo palam seu publice maledixerit, contumeliosisque atque obscenis verbis Dominum nostrum Jesum Christum vel gloriosam virginem Mariam ejus genitricem expresse blasphemaverit, si munus publicum jurisdictionemve gesserit, perdat emolumenta trium mensium pro prima et secunda vice dicti officii; si tertio deliquerit, illo eo ipso privatus exsistat. Si clericus vel sacerdos fuerit, eo ipso quod de delicto hujusmodi fuerit convictus, etiam beneficiorum, quaecumque habuerit, fructibus, applicandis ut infra, unius anni mulctetur: et hoc sit pro prima vice, qua blasphemus ita deliquerit; pro secunda vero si ita deliquerit, et convictus, ut praefertur, fuerit, si unicum habuerit beneficium, eo privetur; si autem plura, quod ordinarius maluerit, id amittere cogatur. Quod si tertio ejus sceleris arguatur et convincatur, dignitatibus ac beneficiis omnibus quaecumque habuerit, eo ipso privatus exsistat, ad eaque ulterius retinenda inhabilis reddatur, eaque libere impetrari et conferri possint. Laicus vero blasphemans, si nobilis fuerit, poena viginti quinque ducatorum mulcetetur; et pro secunda vice, quinquaginta fabricae basilicae principis Apostolorum de Urbe applicandis; et aliis, ut infra deducitur: pro tertio vero nobilitatem perdat. Si vero ignobilis ac plebeius fuerit, in carcerem detrudatur. Quod si ultra duas vices publice blasphemans deprehensus fuerit, mitra infami per integram diem ante fores ecclesiae principalis mitratus stare cogatur. Si vero pluries in hoc ipsum peccatum lapsus fuerit, ad perpetuos carceres, vel ad triremes damnetur, ad judicis deputati arbitrium. In foro autem conscientiae nemo blasphemiae reus, absque gravissima poenitentia, severi confessoris arbitrio injuncta, possit absolvi. Qui vero reliquos sanctos blasphemaverit, arbitrio judicis rationem personarum habituri, mitius aliquanto puniri volumus. Statuimus etiam, ut saeculares judices, qui contra tales blasphemiae convictos non animadverterint, eosque justis poenis minime affecerint, quantum in eis fuerit, quasi eidem sceleri obnoxii, eisdem quoque poenis subjiciantur. Qui vero in illis inquirendis puniendisque diligentes et severi fuerint, pro qualibet vice decem annorum indulgentiam consequantur, et tertiam partem mulctae pecuniariae habeant. Quicumque vero blasphemantem audierint, cum verbis acriter objurgare teneantur, si citra periculum suum id fieri posse continget; eumdemque deferre, vel notificare apud judicem ecclesiasticum seu saecularem intra triduum debeant. Quod si plures dictum blasphemantem simul audiverint, singuli eum accusare teneantur; nisi forte omnes convenerint, ut unus pro cunctis tali fungatur officio. Quos omnes in virtute sanctae obedientiae hortamus et monemus in Domino, ut pro divini nominis reverentia et honore, in suis dominiis ac terris praemissa omnia servari et exactissime exsequi mandent ac faciant, uberriman ab ipso Deo tam boni ac pii operis mercedem habituri; similemque annorum decem indulgentiam ab Apostolica sede consecuturi cum tertia parte mulctae, qua dictus blasphemus plectetur, quoties tale scelus puniendum curaverint. Quam quidem indulgentiam et reliquam tertiam mulctae partem accusatori, blaspemi nomen deferenti, similiter concedi et assignari volumus, aliis poenis contra hujusmodi blasphemos per sacros canones expressis, nihilominus in suo robore manentibus.

3. Ut clerici praesertim caste continenterque juxta canonum praecepta vivant, statuimus ut contra facientes acriter secundum canones puniantur. Si quis vero tam laicus quam clericus, de crimine, propter quod venit ira Dei in filios diffidentiae, convictus fuerit, poenis per sacros canones aut jus civile respective impositis puniatur. Concubinarii autem, sive laici sive clerici fuerint, eorumdem canonum poenis mulctentur; neque superiorum tolerantia, seu prava consuetudo, quae potius corruptela dicenda est, a multitudine peccantium, aliave quaelibet excusatio eis aliquo modo suffragetur, sed juxta juris censuram severe puniantur.

4. Ad bonum vero et quietum regimen civitatum, ac locorum omnium Romanae ecclesiae subjectorum, constitutiones bonae memoriae Aegidii episcopi Sabinensis olim editas innovamus, easque inviolabiliter servari praecipimus et mandamus.

5. Et ut nefariae simoniae labes ac pestis non solum a Romana curia, sed ex omni etiam Christiana ditione in perpetuum ejiciatur, constitutiones per antecessores nostros etiam in conciliis contra hujusmodi simoniacos editas innovamus, easque inviolabiliter servari praecipimus, ac poenas in eis contentas pro expressis et insertis haberi, et delinquentes etiam auctoritate nostra affici volumus.

6. Statuimus quoque et ordinamus, ut quilibet habens beneficium cum cura vel sine cura, si post sex menses ab obtento beneficio divinum officium non dixerit, legitimo impedimento cessante, beneficiorum suorum fructus suos non faciat pro rata omissionis recitationis officii et temporis; sed eos tamquam injuste perceptos, in fabricas hujusmodi beneficiorum vel pauperum eleemosynas erogare teneatur. Si vero ultra dictum tempus in simili negligentia contumaciter permanserit, legitima monitione praecedente, beneficio ipso privetur, cum propter officium detur beneficium. Intelligatur autem officium omittere, quoad hoc, ut beneficio privari possit, qui per quindecim dies illud bis saltem non dixerit, Deo tamen ultra praemissa de dicta omissione redditurus rationem. Quae poena in habentibus plura beneficia reiterabilis toties sit, quoties contra facere convincentur.

7. Et cum fructuum ecclesiarum cathedralium et metropolitanarum, monasteriorumque et aliorum quorumcumque beneficiorum ecclesiasticorum plenaria dispositio et administratio ad nos et Romanum pontificem pro tempore exsistentem, et illos etiam, qui ejusmodi ecclesias, monasteria et beneficia jure et canonice obtinent, solum pertineant; saecularesque principes, omni etiam divino jure id prohibente, dictis ecclesiis, monasteriis ac beneficiis intromittere se nullatenus debeant: statuimus et ordinamus, ut fructus, redditus et proventus ecclesiarum, monasteriorum ac beneficiorum, per saeculares ullos principes, etiamsi Imperator, reges, reginaeve, seu respublicae vel potentatus fuerint, aut per eorum officiales, seu judices, etiam ecclesiasticos, vel quascumque alias personas, publicas vel privatas, de eorumdem Imperatoris, regum, reginarumve ac principum, rerumque publicarum vel potentatuum mandato, sequestrari, occuparive, aut modo aliquo detineri; ipsique hujusmodi ecclesias, monasteria ac beneficia obtinentes, sub praetextu fabricae instaurationisque, sine Romani pontificis tempore exsistentes expressa licentia, aut eleemosynarum, seu quovis alio colore aut fuco, impediri non debeant, quominus de illis, ut antea, libere ac sine impedimento disponere valeant. Et si sequestrati fuerint, occupative aut detenti, integre libereque ac sine exceptione vel mora, praelatis ad quos de jure legitimeque spectant, restituantur; de quibus si dissipati nusquam reperiri possint, eorum justa aestimatione facta, dictis praelatis satisfieri volumus per eos, qui dictas sequestrationes, applicationes, dissipationesque fecerint, aut fieri mandaverint, sub poena excommunicationis aut interdicti ecclesiastici, talium principum terris et dominio eo ipso incurrendis; et ut eorum, ac eisdem subjectorum bona ubicumque reperta, si moniti parere noluerint, capi et retineri possint. Ipsi vero contra facientes, tam supradictis poenis, quam privationis feudorum et privilegiorum, quae a nobis et Romana vel aliis ecclesiis nunc et pro tempore obtinuerint, et aliis contra violatores et oppressores libertatis ecclesiasticae, etiam per extravagantes et alias constitutiones, etiam incognitas, et forsan in usu non exsistentes, impositis, quarum omnium tenores pro expressis et insertis habentes innovamus, ac perpetuum firmitatis robur habere decernibus et declaramus; ac secundum eas per quoscumque judices, etiam

sanctae Romanae ecclesiae cardinales, sublata et adempta eis aliter judicandi declarandique potestate, sententiari, judicari et interpretari debere volumus atque mandamus.

8. Et cum a jure, tam divino quam humano, laicis potestas nulla in ecclesiasticas personas attributa sit, innovamus omnes et singulas constitutiones felicis recordationis Bonifacii Papae octavi, etiam praedecessoris nostri, quae incipit: "Felicis," et Clementis quinti, quae incipit: "Si quis suadente," nec non quascumque alias Apostolicas sanctiones in favorem libertatis ecclesiasticae, et contra ejus violatores quomodolibet editas, et poenis etiam contra talia praesumentes, in bulla quae legitur in Coena Domini, contentis, in suo robore permansuris. Et cum in Lateranensi pariter ac conciliis generalibus sub excommunicationis poena prohibitum fuerit, ne reges, principes, duces, comites, barones, respublicae et alii potentatus, quicumque regnis, provinciis, civitatibus ac terris quoquo modo praesidentes, collectas, decimas, et alia hujusmodi onera, clericis, praelatis et aliis quibuscumque personis ecclesiasticis imponant, exigantque, neve a sponte etiam dantibus et consentientibus etiam recipiant; atque in praemissis auxilium, favorem, consiliumve palam vel occulte praestantes in excommunicationis latae sententiae poenam eo ipso incidant; ipsae quoque respublicae ac communitates et universitates circa hoc quomodolibet delinquentes ecclesiastico eo ipso subjiciantur interdicto; praelati etiam, praemissis absque Romani pontificis expressa licentia ultro consentientes, excommunicationis et depositionis poenam ipso facto incurrant; statuimus et ordinamus, ut de cetero talia praesumentes, etiamsi, ut praefertur, qualificati fuerint, ultra supradictas poenas, quas contraveniendo eo ipso incurrere volumus, innovamus, quod ad omnes actus legitimos, inhabiles et intestabiles habeantur.

9. Et cum secundum leges civiles, et sacrorum canonum censuras, sortilegia per invocationem daemonum, incantationes ac divinationes superstitionesque prohibitae sint; statuimus, decernimus et ordinamus, ut clerici, qui in praemissis culpabiles inventi fuerint, arbitrio superiorum infamia notentur; si vero non destiterint, deponantur, atque in monasterium ad tempus arbitrio superioris praefiniendum, detrudantur, beneficiisque et officiis ecclesiasticis priventur. Laici vero utriusque sexus, excommunicationis et aliis poenis juris, tam civilis quam canonici, subjaceant.

10. Et ut omnes ficti Christiani, ac de fide male sentientes, cujuscumque generis aut nationis fuerint, nec non haeretici, seu aliqua haeresis labe polluti, vel Judaizantes, a Christi fidelium coetu penitus eliminentur, et a quocumque loco, et praesertim a Romana curia expellantur, ac debita animadversione puniantur; statuimus, ut contra eos diligenti inquisitione ubique et in dicta curia maxime, procedatur per judices per nos deputandos; et ejus criminis reos et legitime convictos, debitis poenis puniri, relapsos vero, absque ulla spe veniae aut remissionis affici volumus.

11. Et cum constitutiones et ordinationes nostrae hujusmodi, quas pro nunc ordinamus, vitam, mores, ecclesiasticamque disciplinam concernant, tam officiales nostros quam alios, tam in Romana curia quam extra ubique locorum commorantes imitari convenit, illis ligari, eosque ad earum observationem inviolabiliter teneri volumus atque decernimus.[5]

Ex Bulla "Inter multiplices," sessio x, 4 Maii, 1515.

... cum olim inter nonnullos dilectos filios sacrae theologiae magistros, ac juris utriusque doctores, controversiam quamdam non sine populorum scandalo et murmura-

[5] Hardouin, IX, 1747–58.

tione exortam, et nuper his diebus innovatam esse compererimus circa pauperum relevationem, in mutuis eis publica auctoritate faciendis, qui Montes pietatis vulgo appellantur; quique in multis Italiae civitatibus ad subveniendum per hujusmodi mutuum pauperum inopiae, ne usurarum voragine deglutiantur, a civitatum magistratibus et aliis Christi fidelibus sunt instituti, atque a sanctis viris divini verbi praeconibus, et laudati et persuasi, ac a nonnullis etiam summis pontificibus praedecessoribus nostris probati et confirmati sint, ne praefati montes a Christiano dogmate dissonantes, vel non utraque parte diversimode sentiente atque praedicante. Nonnullis enim magistris et doctoribus dicentibus eos montes non esse licitos, in quibus aliquid ultra sortem pro libra, decurso certo tempore per ministros hujus montis ab ipsis pauperibus, quibus mutuum datur, exigitur, et propterea ab usurarum crimine injustitiave, seu ab aliqua certi specie mali mundos non evadere, cum Dominus noster, Luca evangelista attestante, aperto nos praecepto obstrinxerit, ne ex dato mutuo quidquam ultra sortem sperare debeamus. Ea enim propria est usurarum interpretatio, quando videlicet ex usu res, quae non germinat, nullo labore, nullo sumptu, nullove periculo lucrum fetusque conquiri studetur. Addebant etiam iidem magistri et doctores, in his montibus neque commutativae neque distributivae justitiae fieri satis, cum tamen justitiae terminos contractus hujusmodi excedere non debeant, si debeant approbari; idque praeterea probare nitebantur, quia impensae, pro hujusmodi montium conservatione a pluribus, ut aiunt, debitae, a solis pauperibus, quibus mutuum datur, extorqueantur; pluraque interdum ultra necessarias et moderatas impensas, non absque specie mali ac incentivo delinquendi, quibusdam aliis personis, ut inferre videntur, exhibeantur. Aliis vero pluribus magistris et doctoribus contra asserentibus, et in multis Italiae gymnasiis verbo et scripto conclamantibus pro tanto bono, tamque reipublicae pernecessario, modo ratione mutui nihil petatur, neque speretur; pro indemnitate tamen eorumdem montium, impensarum videlicet ministrorum eorumdem ac rerum omnium ad illorum necessariam conservationem pertinentium, absque montium hujusmodi lucro, idque moderatum et necessarium ab his, qui ex hujusmodi mutuo commodum suscipiunt, licite ultra sortem exigi et capi posse nonnihil licere, cum regula juris habeat, quod qui commodum sentit, onus quoque sentire debeat, praesertim si Apostolica accedat auctoritas. Quam quidem sententiam a felicis recordationis Paulo secundo, Sixto quarto, Innocentio octavo, Alexandro sexto et Julio secundo Romanis pontificibus praedecessoribus nostris probatam, a sanctis quoque ac Deo devotis, et in magna ob sanctitatis opinionem existimatione habitis, evangelicae veritatis praedicatoribus praedicatam esse ostendunt. Nos super hoc prout nobis est ex alto concessum, opportune providere volentes, alterius quidem partis, justitiae zelum, ne vorago aperiretur usurarum, alterius pietatis et veritatis amorem, ut pauperibus subveniretur: utriusque vero partis studium commendantes, cum haec ad pacem et tranquillitatem totius reipublicae Christianae spectare videantur, sacro approbante concilio, declaramus et definimus, Montes pietatis antedictos per respublicas institutos, et auctoritate sedis Apostolicae hactenus probatos et confirmatos, in quibus pro eorum impensis et indemnitate aliquid moderatum ad solas ministrorum impensas et aliarum rerum ad illorum conservationem, ut praefertur, pertinentium pro eorum indemnitate dumtaxat ultra sortem absque lucro eorumdem montium accipitur, neque speciem mali praeferre, nec peccandi incentivum praestare; neque ullo pacto improbari, quinimmo meritorium esse, ac laudari et probari debere tale mutuum et minime usurarium putari, licereque illorum pietatem et misericordiam populis praedicare, etiam cum indulgentiis a sancta sede Apostolica eam ob causum concessis: ac deinceps alios etiam similes montes cum Apostolicae sedis approbatione erigi posse; multo tamen perfectius, multoque sanctius fore, si omnino tales montes gratuiti constituerentur; hoc est, si illos erigentes, aliquos census assignarent, quibus si non omni, saltem vel media ex parte hujusmodi Montium ministrorum solvantur impensae, ut ad leviorem aeris solvendi

portionem medio hoc pauperes gravari contingat; ad quos, cum hujusmodi census assignatione, pro impensarum supportatione erigendos, Christi fideles majoribus indulgentiis invitandos esse decernimus. Omnes autem religiosos, et ecclesiasticas ac saeculares personas, qui contra praesentis declarationis et sanctionis formam de cetero praedicare seu disputare verbo vel scriptis ausi fuerint, excommunicationis latae sententiae poenam, privilegio quocumque non obstante, incurrere volumus. . . .[6]

Ex Bulla "Regimini universalis ecclesiae," sessio x, 4 Maii, 1515.

. . . nuper ad nostrum relatio fide digna perduxit auditum, quod canonici patriarchalium, metropolitanarum et cathedralium et collegiatarum ecclesiarum, et alii clerici saeculares, plura praesumunt, quae ipsis infamiam non parvam pariunt, et aliis inferunt laesionem, praetextu exemptionis et libertatis a dicta sede (Apostolica) obtentae, ordinariorum correctiones et ordinationes subterfugiunt, ac eorum forum sive judicium declinant. Nonnulli etiam impunitatem suorum excessuum per privilegium exemptionis obtinere sperantes, excessus ipsos committere non verentur; quos nisi per exemptionem, qua gaudent, crederent se defendi, nullatenus fuissent commissuri. Hinc itaque accidit, ut propter eorum audaciam, qui praetextu privilegii exemptionis impunitatem excessuum obtinere confidentes, nonnulla multoties committant enormia, per quae plurimum diffamatur ecclesia, et scandala gravia generantur; potissime autem cum talia per eos, ad quos horum spectat correctio, incorrecta remaneant, seu illi, ad quos spectat, illa punire negligunt:

1. nos volentes, ne eo praetextu delicta remaneant impunita, morbo hujusmodi necessariam adhibere medelam, sacro approbante concilio statuimus, ut de cetero illi, quibus exemptorum correctio et punitio a dicta sede demandata est, circa illam vigilanter intendant, et diligenter officii sibi commissi debitum exsequantur; et quamprimum eis exemptos ipsos deliquisse, legitime constiterit, ita eosdem exemptos delinquentes puniant, quod iidem exempti metu poenae a suis arceantur insolentiis, et alii eorum exemplo perterriti, prosilire ad similia merito perhorrescant. Et si circa hoc negligentes fuerint, dioecesani et alii locorum ordinarii eosdem, quibus exemptorum correctio hujusmodi competit, personaliter, si illorum copia et notitia haberi poterit; alioquin, vel si nullus in partibus exemptorum ipsorum certus judex fuerit, eos quorum sua in praemissis interesse putaverint, per edictum publicum cathedralium seu aliarum ecclesiarum locorum, in quibus exemptorum judices hujusmodi residere, seu nullis eorumdem exemptorum judicibus exsistentibus, ipsos exemptos deliquisse contigerit, valvis affigendum moneant, ut ipsi tales exemptos delinquentes et criminosos puniant et castigent infra competentem terminum, monentium ipsorum arbitrio moderandum. Et si ipsi moniti in hoc negligentes fuerint, et id adimplere neglexerint, seu recusaverint, tunc, ut in eo, in quo deliquerint, puniantur, cognitione hujusmodi ea vice sint privati, et se non intromittant ullatenus de eisdem; sed dioecesani et alii locorum ordinarii hujusmodi contra tales exemptos, delinquentes et criminosos auctoritate nostra ad inquisitionem, vel per accusationem sine aliquibus tormentis procedere, et testes per seipsos examinare possint; ac processum ipsum, quem ratione solemnitatis juris, praeterquam ratione citationis omissae, dummodo delictum alias rite probatum fuerit, nullum allegari vel dici posse prohibemus, sed per eos habitum, clausum, et eorum sigillo munitum, ad sedis Apostolicae examen, ipsorum exemptorum delinquentium expensis, etiam in ipso processu factis, ad quarum solutionem ordinarii ipsi possint eosdem inquisitos et accusatos compellere, per proprium vel alium nuncium, quanto citius destinare procurent,

[6] Hardouin, IX, 1773-75.

apud eamdem sedem per Romanum pontificem vel alium, cui duxerit committendum, diligenter examinandum; et ita culpabiles repertos, quoad condemnationem vel propter sufficientia indicia, propter quae ad torturam pro veritate exquirenda procedi valeat, ad ipsos dioecesanos, seu ordinarios per eos auctoritate nostra in causa inquisitionis seu accusationis ulterius legitime procedendum, et causam ipsam, prout justum fuerit, terminandam remittendum.

2. Notarii autem dictae sedis, quorum officium in ipsis primitivae ecclesiae initiis a felicis recordationis Clemente Papa primo ad sanctorum gesta perquirenda atque conscribenda noscitur institutum, ad protonotariatus officium assumpti, habitum et rochetum deferentes, et alii nostri et dictae sedis officiales, actu sua officia exercentes, tam in civilibus, quam in criminalibus ab omni ordinariorum jurisdictione sint exempti. Alii vero notarii habitum protonotariarus non deferentes, nisi illum infra trimestre post praesentium publicationem assumpserint; et ipsi ac alii in posterum assumendi, habitum et rochetum hujusmodi continue non gestantes, atque alii nostri et dictae sedis officiales, officia sua actu non exercentes, tam in criminalibus quam in civilibus ratione causae summam viginti quinque ducatorum auri de camera non excedentis dumtaxat, eorumdem dioecesanorum et ordinariorum jurisdictioni subjaceant. In civilibus vero causis summam hujusmodi excedentibus, plena gaudeant exemptione, et a dictorum dioecesanorum et ordinariorum jurisdictione penitus sint exempti.

3. Dignum quoque et etiam congruum arbitrantes, quod ex sanctae Romanae ecclesiae cardinalium familiaribus illi dumtaxat privilegio exemptionis gaudeant, qui actu domestici et continui sunt commensales, vel ab eisdem cardinalibus ad ipsorum exsequenda negotia missi, vel qui recreationis causa ad tempus a Romana curia absentes fuerint. Ceteris vero, etiam familiaritatis litteras habentibus, quominus coercitioni dioecesanorum et ordinariorum eorumdem subjaceant, familiaritatis hujusmodi privilegium nullatenus suffragetur.

4. Et cum eisdem dioecesanis, ut monasteria monialium sedi Apostolicae immediate subjecta, in eorum dioecesibus consistentia, semel in anno visitare possint, per constitutionem in concilio Viennensi editam, quae incipit: "Attendentes," plena fuerit data facultas, illam innovamus, ac exemptionibus et privilegiis quibuscumque non obstantibus, districte servari praecipimus et mandamus. Per praemissa quoque eisdem dioecesanis et ordinariis, casibus quibus in exemptos a jure jurisdictio concessa est, nullatenus praejudicium generetur.

5. Exemptiones autem de cetero absque rationabili causa et quorum interest, minime citatis pro tempore concessas, nullius roboris et momenti esse decernimus.

6. Et cum ecclesiasticus ordo confundatur, si sua unicuique jurisdictio non servetur, ordinariorum jurisdictioni, quantum cum Deo possumus, favere, ac litibus finem celerius imponi, et litigantium immoderatis sumptibus et expensis parci satagentes, statuimus et ordinamus, quod singulae causae, tam spirituales quam civiles et mixtae, ac forum ecclesiasticum quomodolibet concernentes, et beneficiales, dummodo beneficia ipsa generaliter reservata non fuerint, et ipsorum singulorum beneficiorum fructus, reditus et proventus viginti quatuor ducatorum auri de camera secundum communem aestimationem, valorem annuum non excedant, in prima instantia extra Romanam curiam, et in partibus coram ordinariis locorum dumtaxat cognosci et terminari; ita quod nulli ante definitivam sententiam liceat appellare, nec appellatio, si fuerit emissa, ullatenus admitti, nisi ab interlocutoria, quae vim habeat definitivae, vel a gravamine minime concernente negotium principale, quod per appellationem a definitiva sententia reparari

non possit; nisi alter collitigantium adversarii sui potentiam merito perhorrescens, seu alia probabili et honesta causa, aliter quam per proprium juramentum saltem semiplene probata, coram ordinario non auderet litigare. Eo enim casu causae ipsae etiam appellationum in dicta curia, etiam in prima instantia, committi et cognosci et terminari possint. Alioquin appellationes, et illarum etiam aliarum causarum hujusmodi commissiones in posterum, et quidquid inde secutum fuerit, nullius sint roboris vel momenti. Judices autem et conservatores a sede Apostolica deputati, si in altero jurium graduati non fuerint, assessorem partibus non suspectum, ab ipsis partibus vel earum altera requisiti, assumere, et secundum ejus relationem judicare teneantur.

7. Et quia saepius et multiplici relatione percepimus, quamplurimas ecclesias, et illis praesidentes episcopos, tam citra quam ultra montes, vexari in eorum jurisdictionibus, juribus et dominiis, ac turbari a domicellis, principibus et nobilibus eorumdem, qui sub colore jurispatronatus, quod in beneficiis ecclesiasticis habere confingunt, nullo privilegio Apostolico suffulti, sine ordinariorum collationibus et litteris, et absque aliquo saltem colorato titulo beneficia non solum clericis, sed etiam laicis conferre, sacerdotes et clericos delinquentes ad eorum libitum punire; decimas omnium rerum, ad quarum solutionem de jure tenentur ac cathedralium et alia, quae legis dioecesanae et jurisdictionis sunt, et ad ipsos episcopos dumtaxat pertinent, temere auferre, fraudare, usurpare, seu ut praemissa fiant, mandare, ac ipsa et fructus quoscumque, ne a civitatibus, terris et locis eorum extrahantur, prohibere; feuda, possessiones et praedia occupare, et indebite detinere, seu ad feuda et bona ipsarum ecclesiarum eis concedendum, ac beneficia ecclesiastica personis per eos nominatis conferendum, minis et terroribus ac aliis viis indirectis inducere et compellere, et alia quamplurima damna, jacturas et injurias ecclesiis et earum praelatis, ac cleris praefatis inferri, non modo permittere, sed etiam expresse mandare praesumant. Attendentes igitur, quod laicis in clericos et personas ecclesiasticas, ac bona ecclesiastica non est attributa facultas; atque aequum et justum esse, ut in eos jura insurgant, qui illa offendere praesumunt; nec non considerantes, quantum ex his tam nostro et Apostolicae sedis honori, quam personarum ecclesiasticarum quieto et prospero statui, non sine damnanda pernicie derogetur; ac cupientes eos, quos ad observantiam jurium, virtutum praemia non inducunt, non tam adjectarum exaggeratione poenarum, quam adjiciendarum de novo formidine a temerariis ausibus refrenare; omnes et singulas constitutiones, quae super decimarum solutione, et contra violatores et raptores ecclesiarum, et incendiarios, agrorum depopulatores, et tam sanctae Romanae ecclesiae cardinales, quam venerabiles fratres nostros episcopos, et alias personas ecclesiasticas, saeculares et regulares capientes, detinentes, et eorum jurisdictionem et jura quomodolibet indebite occupantes, aut eos in eorum jurisdictionis exercitio perturbantes seu molestantes; eos quoque ad conferendum beneficia ecclesiastica personis per eos nominatis, aut alias de illis pro eorum libito voluntatis disponendum, et feuda ac bona ecclesiastica in emphyteusi concedendum, aut alias vendendum temere compellentes; nec non statuta contra libertatem ecclesiasticam facientes, et ad praemissa, auxilium, consilium vel favorem praestantes hactenus emanarunt, innovamus. Et cum ea, nedum juri contraria, sed etiam ecclesiasticae libertati opprobriosa sint quamplurimum et adversa; ut de officio nobis credito dignam Deo possimus reddere rationem, affectibus et monitis paternis Imperatorem, reges, principes, duces, marchiones, comites, barones et quoscumque alios alterius cujuscumque nobilitatis, praeeminentiae, potentiae seu potestatis, excellentiae vel dignitatis exsistentes, attente hortamur in Domino, eisdem in virtute sanctae obedientiae mandantes, ut ipsi constitutiones praedictas observent, et faciant a suis etiam subjectis inviolabiliter observari, quacumque consuetudine contraria non obstante, si divinam offensam et sedis Apostolicae debitam vitare voluerint ultionem. Ac collationes de

dictis beneficiis sic factas, nullas et irritas nihilominus esse decernimus, ac illis utentes, reddantur inhabiles ad alia beneficia ecclesiastica obtinenda, donec cum eis super hoc per sedem praedictam fuerit dispensatum.

8. . . . patriarchis, primatibus, archiepiscopis et episcopis districte injungimus, ut de officio eis commisso dignam Deo possint reddere rationem, canones, concilia et synodos hujusmodi fieri mandantes, quocumque privilegio non obstante, inviolabiliter observent; praeterquam quoad concilium provinciale, quod de cetero singulis trienniis mandamus, ad illaque etiam exemptos accedere debere decernimus, privilegio ac consuetudine quacumque contraria non obstantibus. Circa hoc autem negligentes, poenas in eisdem canonibus contentas se noverint incursuros.

9. Et cum constitutione in concilio Viennensi edita, quae incipit: "In plerisque," ut pontificiae dignitatis honor servaretur, statutum fuerit, ne ecclesiis cathedralibus bonis temporalibus sine quibus spiritualia diu esse non possunt, privatis, ac clero et populo Christiano carentibus, de aliquibus personis praesertim religiosis provideretur; constitutionem ipsam innovamus, illamque inviolabiliter observari debere volumus atque mandamus, nisi aliqua justa causa, in consistorio nostro secreto approbanda, aliter duxerimus faciendum. Nos enim quidquid contra praemissa, vel aliquod praemissorum contigerit attentari, irritum decernimus et inane, contraria quacumque constitutione vel privilegio non obstante.[7]

Ex Bulla "Inter sollicitudines," sessio x, 4 Maii, 1515.

. . . licet litterarum peritia per librorum lectionem possit faciliter obtineri; ac ars imprimendi libros temporibus potissimum nostris divino favente numine inventa seu aucta et perpolita, plurima mortalibus attulerit commoda; cum parva impensa, copia librorum maxima habeatur, quibus ingenia ad litterarum studia percommode exerceri, et viri eruditi in omni linguarum genere, praesertim autem catholici, quibus sanctam Romanam ecclesiam abundare affectamus, facile evadere possunt; qui etiam infideles sciant et valeant sacris institutis instruere, fideliumque collegio per doctrinam Christianae fidei salubriter aggregare. Quia tamen multorum querela nostrum et sedis Apostolicae pulsavit auditum, quod nonnulli hujus artis imprimendi magistri, in diversis mundi partibus libros tam Graecae, Hebraicae, Arabicae et Chaldaeae linguarum in Latinum translatos, quam alios, Latino ac vulgari sermone editos, errores etiam in fide, ac perniciosa dogmata, etiam religioni Christianae contraria, ac contra famam personarum etiam dignitate fulgentium continentes, imprimere ac publice vendere praesumunt; ex quorum lectura non solum legentes non aedificantur, sed in maximos potius tam in fide, quam in vita et moribus prolabuntur errores; unde varia saepe scandala, prout experientia rerum magistra docuit, exorta fuerunt, et majora in dies exoriri formidantur. Nos itaque, ne id, quod ad Dei gloriam, et fidei augmentum, ac bonarum artium propagationem salubriter est inventum, in contrarium convertatur, ac Christi fidelium saluti detrimentum pariat; super librorum impressione curam nostram habendam fore duximus, ne de cetero cum bonis seminibus spinae coalescant, vel medicinis venena intermisceantur. Volentes igitur de opportuno super his remedio providere, hoc sacro approbante concilio, ut negotium impressionis librorum hujusmodi eo prosperetur felicius, quo deinceps indago solertior diligentius et cautius adhibeatur: statuimus et ordinamus, quod de cetero perpetuis futuris temporibus nullus librum aliquem seu aliam quamcumque scripturam, tam in urbe nostra, quam aliis quibusvis civitatibus et

[7] Hardouin, IX, 1775–79.

dioecesibus inprimere seu imprimi facere praesumat, nisi prius in Urbe per vicarium nostrum et sacri palatii Magistrum; in aliis vero civitatibus et dioecesibus per episcopum vel alium habentem peritiam scientiae libri, seu scripturae hujusmodi imprimendae, ab eodem episcopo ad id deputandum, ac inquisitionem haereticae pravitatis sive dioecesis, in quibus librorum impressio hujusmodi fieret, diligenter examinentur, et per eorum manu propria subscriptionem, sub excommunicationis sententia gratis et sine dilatione imponendam, approbentur. Qui autem secus praesumpserit, ultra librorum impressorum amissionem, et illorum publicam combustionem, ac centum ducatorum fabricae Principis Apostolorum de Urbe sine spe remissionis solutionem, ac anni continui exercitii impressionis suspensionem, excommunicationis sententia innodatus exsistat; ac demum ingravescente contumacia taliter per episcopum suum vel vicarium nostrum respective per omnia juris remedia castigetur, quod alii ejus exemplo similia minime attentare praesumant.[8]

Ex Bulla "Supernae majestatis praesidio," sessio xi, 19 Dec., 1516.

1. . . . sacro approbante concilio, statuimus et ordinamus, ut nullus tam clericus saecularis, quam cujuscumque etiam Mendicantium ordinis regularis, aut quivis alius ad quem facultas praedicandi, tam de jure quam de consuetudine vel privilegio aut alias pertinet, ad hujusmodi officium exercendum admittatur, nisi prius per superiorem suum respective diligenter examinatus (in qua re conscientiam ipsius superioris oneramus), ac morum honestate, aetate, doctrina, probitate, prudentia, et vitae exemplaritate ad illud aptus et idoneus reperiatur; et hic, quocumque postea praedicaturus accesserit, de hujusmodi examine et idoneitate sua per litteras authenticas seu alias sui examinatoris approbatorisque episcopis et aliis locorum ordinariis fidem legitime faciat.

2. Mandantes omnibus qui hoc onus sustinent, quique in futurum sustinebunt, ut evangelicam veritatem, et sanctam scripturam juxta declarationem, interpretationem, et ampliationem doctorum, quos ecclesia vel usus diuturnus approbavit, legendosque hactenus recepit, et in posterum recipiet, praedicent et explanent; nec quidquam ejus proprio sensui contrarium, aut dissonum adjiciant, sed illis semper insistant, quae ab ipsius sacrae scripturae verbis, et praefatorum doctorum interpretationibus, rite et sane intellectis, non discordant. Tempus quoque praefixum futurorum malorum, vel antichristi adventum, aut certum diem judicii praedicare, vel asserere nequaquam praesumant; cum Veritas dicat, non esse nostrum nosse tempora vel momenta, quae Pater posuit in sua potestate; ipsosque qui hactenus similia asserere ausi sunt, mentitos; ac eorum causa reliquorum etiam recte praedicantium auctoritati non modicum detractum fuisse constet; inhibentes omnibus et singulis clericis saecularibus vel regularibus praefatis, ceterisque cujuscumque status, gradus et ordinis exsistant, qui hoc onus assument, ne de cetero in sermonibus suis publicis, alia quaeque futura ex litteris sacris constanter praedicere, nec illa a Spiritu sancto vel divina revelatione se habuisse affirmare, et alienas inanesque divinationes asseverando, aut alio quocumque modo tractanda assumant; sed ex divinae vocis praecepto evangelium omni creaturae, cum vitiorum detestatione et virtutum commendatione enucleent et declarent; et pacem ac dilectionem mutuam a Redemptore nostro tantopere commendatam ubique foventes, non scindant vestem inconsutilem Christi; sed ab episcoporum et praelatorum, ac aliorum superiorum, eorumque status scandalosa detractione, quos coram vulgo et laicis non modo incaute, sed etiam intemperanter reprehendunt et mordent; et ab eis male gestorum expressis quandoque nominibus aperta et manifesta redargutione abstineant.

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[8] Hardouin, IX, 1779–81.

3. Denique constitutionem felicis recordationis Clementis Papae V quae incipit: "Religiosi," quam tenore praesentium innovamus et approbamus, inviolabiliter ab eis observari debere decernimus; ut hac ratione ad utilitatem populi praedicantes, et eum Domino lucrifacientes, talentum, quod ab illo acceperant, superlucrari, et ejusdem gratiam et gloriam consequi mereantur.

4. Ceterum si quibusdam eorum Dominus futura quaedam in Dei ecclesia inspiratione quapiam revelaverit, ut per Amos prophetam ipse promittit, et Paulus Apostolus praedicatorum princeps, *Spiritum,* inquit, *nolite extinguere, prophetias nolite spernere,* hos aliorum fabulosorum, et mendacium gregi connumerari, vel aliter impediri minime volumus. Extinguitur namque ipsius gratia Spiritus, Ambrosio teste, si incipientibus loqui fervor contradictione sopitur; et tunc Spiritui sancto injuria certe fieri dicitur. Et quoniam res magni momenti est, eo quod non de facili credendum sit omni spiritui, sed sint probandi spiritus, teste Apostolo, an ex Deo proveniant; volumus, ut lege ordinaria tales assertae inspirationes, antequam publicentur, aut populo praedicentur, ex nunc Apostolicae sedis examini reservatae intelligantur. Quod si sine morae periculo id fieri non valeret, aut urgens necessitas aliud suaderet, tunc eodem ordine servato, ordinario loci notificentur; ut ille adhibitis secum tribus aut quatuor doctis et gravibus viris, hujusmodi negotio cum eis diligenter examinato, quando id expedire videbunt, super quo eorum conscientias oneramus, licentiam concedere possint.

5. Si qui autem contra praemissorum aliquod committere quidquam ausi fuerint, ultra poenas contra tales a jure statutas, excommunicationis etiam sententiam, a qua nonnisi a Romano Pontifice, praeterquam in mortis articulo constituti, absolvi possint, eos incurrere volumus.[9]

Ex Bulla "Dum intra mentis arcana," sessio xi, 19 Dec., 1516.

1. Ad conservandam . . . inter episcopos et eorum superiores, as praelatos et fratres hujusmodi (mendicantes) mutuam caritatem et benevolentiam, divini quoque cultus augmentum, pacemque et tranquillitatem universalis ecclesiae status, quod ita demum fieri posse cognoscimus, si unicuique quantum fieri potest, sua jurisdictio conservetur; sacro approbante concilio statuimus et ordinamus, quod episcopi et eorum superiores et alii praelati praefati, parochiales ecclesias ad eosdem fratres ratione locorum suorum legitime spectantes, quoad ea, quae ad parochianorum curam, et sacramentorum conservationem, administrationemque pertinent, sine tamen visitatorum insolito gravamine vel impensa, visitare; et illarum curam gerentes, et circa illam delinquentes, si religiosi fuerint, juxta ipsius ordinis regularia instituta intra septa regularis loci; saeculares vero presbyteros, et fratres hujusmodi beneficia obtinentes, libere tamquam suae jurisdictioni subjectos punire.

2. Ac tam praelati quam presbyteri saeculares, qui vinculo excommunicationis ligati non fuerint, Missas in ecclesiis domorum eorumdem devotionis causa celebrare volentes, celebrare possint; ipsique fratres tales celebrare volentes libenter recipere debeant;

3. ac ab eisdem praelatis ad processiones solemnes pro tempore faciendas requisiti, dummodo eorum loca suburbana ultra unum milliare a civitatibus respective non sint remota, accedere;

[9] Hardouin, IX, 1806–09.

4. nec non superiores eorumdem fratrum, fratres, quos ad audiendas confessiones subditorum eorumdem praelatorum pro tempore elegerint, eisdem praelatis personaliter exhibere ac praesentare, si eos sibi exhiberi et praesentari petierint; alioquin eorum vicariis, dummodo ad praelatos ultra duas diaetas accedere non cogantur, omnino teneantur. Possintque illi per eosdem episcopos et praelatos super sufficienti litteratura et aliqua saltem hujusmodi sacramenti peritia dumtaxat examinari; talibusque praesentatis admissis, vel etiam indebite recusatis, confitentes constitutioni, quae incipit: "Omnes utriusque sexus," quoad confessionem dumtaxat satisfecisse censeantur; ipsique fratres etiam forensium confessiones audire valeant.

5. Laicos tamen et clericos saeculares, a sententiis ab homine latis, nullatenus absolvere possint.

6. Eucharistiae vero et extremae unctionis, aliaque ecclesiastica sacramenta illis, quorum etiam infirmorum ac decedentium confessiones audierint, dicentibus proprium sacerdotem illa sibi dare denegasse, dare nequeant, nisi denegatio sine legitima causa facta, vicinorum testimonio probata, aut requisitio coram notario publico facta doceretur. Eorumdem vero fratrum obsequio insistentibus, sacramenta hujusmodi nullatenus ministrare valeant, nisi illorum durante obsequio.

7. Pacta autem et conventiones inter eosdem fratres et praelatos atque curatos pro tempore inita, valeant, nisi per subsecutum capitulum proximum generale vel provinciale refutata, ac per eos refutatio hujusmodi intimata debito tempore fuerint.

8. Parochias autem cum cruce ad levanda funera eorum, qui apud ecclesias domorum et locorum eorumdem suam elegerint sepulturam, intrare non possint, nisi prius praemonito et requisito, et non recusante parochiano presbytero, et tunc sine ejus ac ordinarii praejudicio, nisi eisdem fratribus super hoc antiqua consuetudo, quae sit in viridi observantia, et cum pacifica possessione suffragetur.

9. Volentes quoque sepeliri in habitu eorumdem fratrum in claustro non degentes, sed in propriis domibus habitantes, in eorum ultima voluntate sepulturam sibi libere eligere possint.

10. Quodque fratres ipsi ad ordines promovendi, per ordinarios de grammatica et sufficientia examinari, et dummodo competenter respondeant, per eosdem ordinarios libere admitti, ac nullatenus in eorum ecclesiis seu domibus, seu aliis eorum locis, ab alio quam a dioecesano episcopo, vel ejus vicario, super hoc cum debita reverentia requisito, et absque rationabili causa contradicente, vel eo a dioecesi absente, ad dictos ordines promoveri debeant.

11. Nec ab alio episcopo consecrationem ecclesiae, vel altaris, aut coemeterii benedictionem petere, seu in ecclesiis per eos pro tempore aedificandis, primum lapidem per alienum episcopum poni facere possint, nisi ubi ordinarius bis aut ter cum debitis reverentia et instantia requisitus, sine legitima causa id recusaverit.

12. Et absque curatorum consensu sponsum et sponsam benedicere nequeant.

13. Et ut debitus honor matrici ecclesiae reddatur, tam ipsi fratres, quam alii clerici saeculares, etiam super hoc Apostolicae sedis privilegio muniti, die sabbati majoris

hebdomadae, antequam campana cathedralis vel matricis ecclesiae pulsaverit, campanas in ecclesiis suis pulsare minime possint. Contra facientes poenam centum ducatorum incurrant.

14. Censuras autem per eosdem ordinarios latas et promulgatas, ac in matrici ecclesia civitatum, nec non in collegiatis et parochialibus ecclesiis castrorum et oppidorum respective solenniter publicatas, quando super hoc ab eisdem ordinariis requisiti fuerint, in ecclesiis domorum suarum publicare ac servare.

15. Et ut animarum utriusque sexus Christi fidelium saluti uberius consulatur, illos, quorum confessiones pro tempore audierint, cujuscumque status et conditionis fuerint, ad solvendum decimas, sive aliam bonorum seu fructuum quotam in locis, in quibus decimae ipsae aut similia solvi consueverunt, etiam sub onere conscientiarum suarum monere et hortari, ipsisque etiam illas solvere recusantibus, absolutionem denegare; et super hoc requisiti, id populo etiam publice praedicare et persuadere teneantur.

16. Conservatores autem eisdem fratribus pro tempore a sede Apostolica deputandi, doctrina et probitate praestantes, et in ecclesiastica dignitate constituti esse debeant; et coram eis per eosdem fratres, quibus dati fuerint, ultra duas diaetas a loco suae solitae habitationis nullus trahi possit, privilegiis super hoc alias eis concessis nullatenus suffragantibus.

17. Excommunicati quoque, ordinem Mendicantium profiteri volentes, ubi de interesse tertii agetur, absolvi non possint, nisi praevia satisfactione.

18. Procuratores quoque et negotiorum gestores ac operarii eorumdem fratrum servitiis insistentes, sententiis excommunicationis promulgatis illaqueati sint, et esse censeantur, si illis causam dederint, aut dantibus consilium, auxilium vel favorem praestiterint.

19. Fratres autem et sorores tertii ordinis, nec non mantellati, corrigiati, pizochatae, chordellati, et alii quocumque nomine nuncupati, in propriis domibus habitantes, sepulturam, ubi voluerint, eligere valeant; sed die Paschatis tantum eucharistiam, nec non extremam unctionem, ceteraque ecclesiastica sacramenta, poenitentiae sacramento dumtaxat excepto, a proprio sacerdote recipere, et ad onera, quae laicis incumbunt, perferenda teneantur, ac in foro saeculari coram judicibus saecularibus conveniri possint.

20. Et ne censura vilescat ecclesiastica, et minoris auctoritatis interdicti sententia reputetur, iidem dicti tertii ordinis, ad divina audienda in ecclesiis suorum ordinum tempore interdicti nullatenus admittantur, si causam dederint interdicto, vel causam ipsam nutriant seu foveant, aut dantibus auxilium, consilium vel favorem quoquo modo praestiterint.

21. Collegialiter autem viventes, seu cum claustralibus habitantes, ac mulieres virginalem seu caelibem, aut castam vidualem (expresso voto et sub dicto habitu) vitam ducentes, privilegiis, quibus fratres ordinis, cujus tertiae regulae habitum gestant, gaudere debeant.

22. Omnia etiam singula supradicta ad reliquos religiosos ordinum quorumcumque extendi, et per eos etiam servari debere volumus atque decernimus. Salvis tamen in reliquis desuper non expressis, tam episcoporum quam fratrum et aliorum religiosorum praedictorum juribus, quibus per praemissa in aliquo praejudicare, seu quidquam in-

novare non intendimus; non obstantibus constitutionibus et ordinationibus Apostolicis, ac statutis et consuetudinibus dictorum ordinum, juramento, confirmatione Apostolica, vel quavis alia firmitate roboratis; privilegiis quoque et indultis, ac litteris Apostolicis, contra praemissa, seu aliquod praemissorum eisdem ordinibus concessis, etiam in Mari magno contentis; quibus, etiamsi ad illorum derogationem, de eis, eorumque totis tenoribus specialis, specifica, expressa, individua, ac de verbo ad verbum, non autem per generales clausulas id importantes, mentio seu quaevis alia expressio habenda, aut aliqua alia exquisita forma servanda esset, illorum tenores praesentibus pro sufficienter expressis et insertis habentes, specialiter et expresse derogamus; ceterisque contrariis quibuscumque: decernentes ex nunc irritum et inane, si secus super his a quoquam quavis auctoritate, scienter vel ignoranter contigerit attentari.[10]

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[10] Hardouin, IX, 1832–35.

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